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May 23, 2005

VIA ELECTRONIC MAIL AND HAND-DELIVERY

The Honorable Charles L.A. Terreni
Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Joint Petition for Arbitration of NewSouth Communications, Corp.,
NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III
LLC, and Xspedius [Affiliates] of an Interconnection Agreement with
BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the
Communications Act of 1934, as Amended
Docket No. 2005-57-C, Our File No. 803-10208

Dear Mr. Terreni:

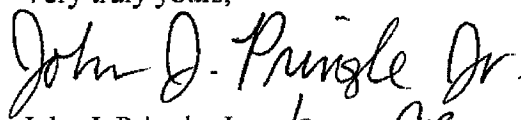
Enclosed is the original and twenty-five (25) copies of the **Rebuttal Testimony of Joint Petitioners** for filing on behalf of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] in the above-referenced matter. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it via the bearer of these documents.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,


John J. Pringle, Jr. by CR

JJP/cr

cc: Office of Regulatory Staff
all parties of record

Enclosures

**BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2005-57-C**

In the Matter of)

)
Joint Petition for Arbitration of)
NewSouth Communications, Corp.,)
NuVox Communications, Inc.,)
KMC Telecom V, Inc.,)
KMC Telecom III LLC, and)
Xspedius [Affiliates] of an)
Interconnection Agreement with)
BellSouth Telecommunications, Inc.)
Pursuant to Section 252(b) of the)
Communications Act of 1934,)
as Amended)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the **Rebuttal Testimony of Joint Petitioners** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
P.O. Box 752
Columbia SC 29202

Office of Regulatory Staff
Legal Department
PO Box 11263
Columbia SC 29211


Carol Roof

May 23, 2005

Columbia, South Carolina

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1 **PRELIMINARY STATEMENTS**

2 **WITNESS INTRODUCTION AND BACKGROUND**

3 **KMC: Marva Brown Johnson**

4 **Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

5 **A.** My name is Marva Brown Johnson. I am Senior Regulatory Counsel for KMC Telecom
6 Holdings, Inc., parent company of KMC Telecom V, Inc. and KMC III LLC. My
7 business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

8 **Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF**
9 **QUESTIONS REGARDING YOUR POSITION AT KMC, YOUR**
10 **EDUCATIONAL AND PROFESSIONAL BACKGROUND AND THE**
11 **COMMISSIONS BEFORE WHICH YOU PREVIOUSLY HAVE TESTIFIED. IF**
12 **ASKED THOSE SAME QUESTIONS TODAY, WOULD YOUR ANSWERS BE**
13 **THE SAME?**

14 **A.** Yes, the answers would be the same.

15 **Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING**
16 **TESTIMONY.**

17 **A.** I am sponsoring testimony on the following issues ¹

¹ The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 37/2-19, 38/2-20, 51/2-33(B)&(C)
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	86/6-3(B), 88/6-5
Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

1

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 **A.** The purpose of my testimony is to offer support for the CLEC Position, as set forth
4 herein, and associated contract language on the issues indicated in the chart above by
5 rebutting the testimony provided by various BellSouth witnesses.

6

7 **KMC: James M. Mertz**

8 **Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

9 **A.** My name is James M. Mertz. I am Director of Government Affairs for KMC Telecom
10 Holdings, Inc., parent company of KMC Telecom V, Inc. and KMC III LLC. My
11 business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF QUESTIONS REGARDING YOUR POSITION AT KMC, YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND AND THE COMMISSIONS BEFORE WHICH YOU PREVIOUSLY HAVE TESTIFIED. IF ASKED THOSE SAME QUESTIONS TODAY, WOULD YOUR ANSWERS BE THE SAME?

A. Yes, the answers would be the same.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am prepared to adopt all testimony sponsored by my colleague, Ms. Marva Brown Johnson. In the event Ms. Johnson is unable to attend the hearing in this matter, then I am prepared to testify on the following issues:²

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 37/2-19, 38/2-20, 51/2-33(B)&(C)
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	86/6-3(B), 88/6-5
Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

² The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

1

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 **A.** The purpose of my testimony is to offer support for the CLEC Position, as set forth with
4 respect to each unresolved issue subsequently herein, and associated contract language on
5 the issues indicated in the chart above.

6

7 **NuVox/NewSouth: Hamilton (“Bo”) Russell**

8 **Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

9 **A.** My name is Hamilton E. Russell, III. I am employed by NuVox as Vice President,
10 Regulatory and Legal Affairs. My business address is 301 North Main Street, Suite
11 5000, Greenville, SC 29601.

12 **Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF**
13 **QUESTIONS REGARDING YOUR POSITION AT NUVOX/NEWSOUTH, YOUR**
14 **EDUCATIONAL AND PROFESSIONAL BACKGROUND AND THE**
15 **COMMISSIONS BEFORE WHICH YOU PREVIOUSLY HAVE TESTIFIED. IF**
16 **ASKED THOSE SAME QUESTIONS TODAY, WOULD YOUR ANSWERS BE**
17 **THE SAME?**

18 **A.** Yes, the answers would be the same.

1 **Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING**
2 **TESTIMONY.**

3 **A.** I am sponsoring testimony on the following issues:³

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 51/2-33(B) & (C)
Attachment 3: Interconnection	None
Attachment 6: Ordering	86/6-3(B),
Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

4
5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 **A.** The purpose of my testimony is to offer support for the CLEC Position, as set forth
7 herein, and associated contract language on the issues indicated in the chart above by
8 rebutting the testimony provided by various BellSouth witnesses.

9

³ The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

1 **NuVox/NewSouth: Jerry Willis**

2 **Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

3 **A. My name is Jerry Willis. I was formerly the Executive Director — Network Cost and**
4 Budgeting for NuVox, from May 2000 until July 31, 2003. Since August 1, 2003 I have
5 been retained as a consultant to NuVox. I can be reached care of NuVox witness
6 Hamilton Russell at 2 North Main Street, Greenville, SC 29601.

7 **Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF**
8 **QUESTIONS REGARDING YOUR RELATIONSHIP WITH**
9 **NUVOX/NEWSOUTH, YOUR EDUCATIONAL AND PROFESSIONAL**
10 **BACKGROUND AND THE COMMISSIONS BEFORE WHICH YOU**
11 **PREVIOUSLY HAVE TESTIFIED. IF ASKED THOSE SAME QUESTIONS**
12 **TODAY, WOULD YOUR ANSWERS BE THE SAME?**

13 **A. Yes, the answers would be the same.**

14 **Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING**
15 **TESTIMONY.**

16 **A. I am sponsoring testimony on the following issues:⁴**

General Terms and Conditions	None
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⁴ The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

Attachment 2: Unbundled Network Elements	37/2-19, 38/2-20
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	88/6-5
Attachment 7: Billing	None
Supplemental Issues	None

1

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 **A.** The purpose of my testimony is to offer support for the CLEC Position, as set forth
4 herein, and associated contract language on the issues indicated in the chart above by
5 rebutting the testimony provided by various BellSouth witnesses.

6

7 **Xspedius: James Falvey**

8 **Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

9 **A.** My name is James C. Falvey. I am the Senior Vice President of Regulatory Affairs for
10 Xspedius Communications, LLC. My business address is 7125 Columbia Gateway
11 Drive, Suite 200, Columbia, Maryland 21046.

1 **Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF**
2 **QUESTIONS REGARDING YOUR POSITION AT XSPEDIUS, YOUR**
3 **EDUCATIONAL AND PROFESSIONAL BACKGROUND AND THE**
4 **COMMISSIONS BEFORE WHICH YOU PREVIOUSLY HAVE TESTIFIED. IF**
5 **ASKED THOSE SAME QUESTIONS TODAY, WOULD YOUR ANSWERS BE**
6 **THE SAME?**

7 **A.** Yes, the answers would be the same.

8 **Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING**
9 **TESTIMONY.**

10 **A.** I am sponsoring testimony on the following issues:⁵

11

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 37/2-19, 38/2-20, 51/2-33(B) & (C)
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	86/6-3(B), 88/6-5,
Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

12

⁵ The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 **A.** The purpose of my testimony is to offer support for the CLEC Position, as set forth
3 herein and associated contract language on the issues indicated in the chart above by
4 rebutting the testimony provided by various BellSouth witnesses.

1 **GENERAL TERMS AND CONDITIONS**⁶
2

3 *Item No. 1, Issue No. G-1 [Section 1.6]: This issue has been resolved.*

4 *Item No. 2, Issue No. G-2 [Section 1.7]: How should "End User" be defined?*

5 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 2/ISSUE G-2.**

6 **A.** The term "End User" should be defined as "the customer of a Party". [*Sponsored by: M.*
7 *Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)*]

8 **Q. DOES BELLSOUTH PROVIDE ANY LEGITIMATE JUSTIFICATION TO**
9 **SUPPORT ITS INSISTENCE ON A RESTRICTIVE DEFINITION OF END**
10 **USER?**

11 **A.** No. BellSouth has no legitimate justification for insisting on a definition of End User
12 which it then seeks to use throughout the Agreement in a manner that could be
13 interpreted to artificially limit its obligations and restricts Joint Petitioners' rights.
14 BellSouth's position is belied by the fact that the Parties agree to treat ISPs as End Users
15 in Attachment 3 of the Agreement and that the industry has treated them as End Users for
16 more than 20 years. If an ISP/ESP is our customer, it is the ultimate user of the
17 telecommunications services we provide. The same holds true if our customer is a
18 university, doctor's office, landlord, bakery, factory or another carrier. Our negotiations
19 with BellSouth revealed that BellSouth had sought to use its definition to attempt to
20 inappropriately curb Joint Petitioners' right to use UNEs as inputs to their own wholesale

⁶ Please note that the disputed contract language for all unresolved issues addressed in this testimony is attached to Joint Petitioners Direct Testimony filed with the Commission on April 12, 2005 as **Exhibit A**. Because this is a dynamic process wherein the Parties continue to negotiate, Joint Petitioners will file, if necessary, an updated version of Exhibit A and an updated issues matrix prior to the hearing.

1 service offerings. There is no sound legal or policy foundation for BellSouth's position.

2 *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

3 **Q. PLEASE RESPOND TO BELL SOUTH'S CONCERN THAT THE JOINT**
4 **PETITIONERS' PROPOSED DEFINITION "COULD BE INTERPRETED IN**
5 **SUCH A MANNER THAT ALLOWED THE JOINT PETITIONERS TO OBTAIN**
6 **UNES IN VIOLATION OF THE ACT." [BLAKE AT 8:8-10]**

7 **A.** Our definition is simple and avoids the mischief that BellSouth sought to create with
8 respect to who is or isn't an ultimate end user of telecommunications. To us, that inquiry
9 is meaningless. Our definition is intentionally designed to refer to any customer of either
10 Party so as to permanently upend BellSouth's initial attempt to essentially trick us into
11 giving up rights to use UNEs as wholesale service inputs. Joint Petitioners already have
12 agreed to use UNEs in compliance with the FCC's rules. Our definition is not intended
13 to restrict or expand our right to use UNEs (and we will agree to put language in the
14 Agreement that says just that). *[Sponsored by: M. Johnson (KMC), H. Russell*
15 *(NVX/NSC), J. Falvey (XSP)]*

16 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
17 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

18 **A.** No. However, Joint Petitioners now believe that they have a commitment from
19 BellSouth that it will agree to a definition which will not be used to artificially limit
20 BellSouth's obligations and Joint Petitioners' rights with respect to UNEs (*i.e.*, BellSouth
21 will not attempt to create limitations on our ability to use UNEs as wholesale service
22 inputs). However, we still don't have a language proposal from BellSouth to match that
23 commitment. Indeed, BellSouth has modified its proposed contract language twice and

1 we have proposed additional changes to BellSouth in an effort to settle this issue. With
2 its latest proposal, BellSouth went from one definition of End User - the ultimate user of
3 the Telecommunications Services - to three separate definitions: End User (upper case),
4 Customer, and end user (lower case).⁷ Aside from the legal arguments, from a logistical
5 perspective, using three separate definitions throughout the Agreement is unnecessarily
6 complex and will cause confusion between the Parties. The risk of selecting the wrong
7 definition for use in the wrong place is high. Most problematic is that BellSouth
8 proposes to define the term “end user” twice, once in upper case to mean a retail
9 customer and once in lower case to mean the End User (in upper case) or any other retail
10 customer of a Telecommunications Service. Neither definition encompasses ISPs/ESPs
11 as retail customers – despite the Parties’ apparent agreement that ISPs/ESPs can be retail
12 customers (they also can be wholesale customers). There is no good reason to use the
13 term “end user” twice, especially when the definition of end user cross references the
14 definition of End User. Such complexity will only serve to hinder the implementation of
15 the Agreement and may result in needless disputes between the Parties.

16 From a legal perspective, BellSouth’s newly proposed definitions, if used or construed
17 improperly, could unlawfully restrict the manner in which Joint Petitioners use UNEs.
18 The FCC has maintained that UNEs may be used by CLECs without limitations imposed
19 by ILECs. Moreover, as stated in our Direct Testimony, there is no apparent “legal or

⁷ This is the second revised proposal received from BellSouth since the filing of testimony in this proceeding. Joint Petitioners had worked with BellSouth to review the preceding proposal and each use of it in the interconnection agreement. BellSouth’s proposed revision has caused Joint Petitioners to have to conduct that review from scratch. While Joint Petitioners have completed such a review and will continue to work with BellSouth to resolve this issue (most of BellSouth’s suggested uses of the definitions were found by us to be in error), we continue to maintain that our definition – which may not be used to expand or to curtail rights to use UNEs, collocation and interconnection – is the most appropriate and is preferable to anything BellSouth has proposed thus far.

1 policy basis to support BellSouth's apparent attempt to limit who can or cannot be
2 Petitioners' customers or whether Petitioners can serve them using UNEs." Joint
3 Petitioners' Direct at 18. BellSouth's new multi-definition approach does nothing to
4 resolve the fact that is the use – or misuse of the proposed definitions – could unlawfully
5 limit the types of customers the Joint Petitioners may serve and stifling competition in
6 South Carolina. Accordingly, the Commission should adopt the definition proposed by
7 the Joint Petitioners, which is easily applied, and comports with all relevant guidelines on
8 how CLECs may use UNEs.⁸ [Sponsored by: M. Johnson (KMC), H. Russell
9 (NVX/NSC), J. Falvey (XSP)]

10 *Item No. 3, Issue No. G-3 [Section 10.2]: This issue has
been resolved.*

11 *Item No. 4, Issue No. G-4 [Section 10.4.1]: What should be
the limitation on each Party's liability in circumstances other
than gross negligence or willful misconduct?*

12 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 4/ISSUE G-4.**

13 **A.** In cases other than gross negligence and willful misconduct by the other party, or other
14 specified exemptions as set forth in CLECs' proposed language, liability should be
15 limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees,
16 charges or other amounts paid or payable for any and all services provided or to be

⁸ BellSouth has inserted its new End User/Customer/end user definitions throughout the Agreement. Since the Joint Petitioners have addressed the definition issue in response to this Issue 2/G-2, we will not address every instance in which BellSouth has made this change. Joint Petitioners have no objection to BellSouth's amendment of its own language proposals, provided that such amendments are not intended to expand burdens imposed on Joint Petitioners or to curtail the rights of Joint Petitioners. If either is the case, Joint Petitioners request that the Commission reject such language proposals, even if it is inclined to adopt any BellSouth language proposals (as a general manner, Joint Petitioners request that the Commission adopt each and every one of Joint Petitioners' language proposals and reject each and every one of BellSouth's language proposals).

1 provided pursuant to the Agreement as of the day on which the claim arose. *[Sponsored*
2 *by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

3 **Q. PLEASE EXPLAIN WHY JOINT PETITIONERS' PROPOSED LIMITATION**
4 **OF LIABILITY LANGUAGE IS APPROPRIATE.**

5 **A.** Joint Petitioners have proposed language that would impose financial liability, under a
6 clear formula based on the percentage of the aggregate fees, charges or other amounts
7 paid or payable for any and all services provided or to be provided pursuant to the
8 Agreement, on the Party whose negligence caused harm to the other. Liability would be
9 assessed up to a percentage cap on this aggregate amount as of the day the claim arose.
10 This provision is reasonable and appropriate in order to ensure that the aggrieved Party is
11 compensated for the true value of the loss it incurred when service is disrupted or
12 impaired. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

13 **Q. BELLSOUTH WITNESS BLAKE CLAIMS THAT JOINT PETITIONERS'**
14 **PROPOSAL "MAKES NO SENSE." [BLAKE AT 12:10] DO YOU AGREE?**

15 **A.** No, obviously not. If Ms. Blake does not understand the proposal, perhaps it is because
16 she had not participated in the negotiation sessions where it was discussed at length. If
17 BellSouth chooses to present a witness that does not understand the issue or claims not to
18 understand the issue, that is its prerogative. However, BellSouth's gambit does not make
19 the Joint Petitioners' proposal senseless. As explained at length in our direct testimony,
20 Joint Petitioners' proposal is hybrid proposal that is based upon what is typically found in
21 commercial contracts. It makes an incremental move away from the "elimination of
22 liability" language that BellSouth has enjoyed for far too long and toward what is more

1 typically found in commercial contracts absent overwhelming market dominance by one
2 party. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

3 **Q. ARE JOINT PETITIONERS SEEKING “TO HAVE BELLSouth INCUR THE**
4 **PETITIONERS’ COST OF DOING BUSINESS”? [BLAKE AT 11:3]**

5 **A.** No. Ms. Blake’s claim that the costs associated with *BellSouth’s* negligence or “failures
6 by BellSouth to perform exactly as the contract requires” (BellSouth’s own words) can
7 fairly be considered part of the “Petitioners’ cost of doing business” is patently untenable.
8 *See* Blake at 11:3. BellSouth should be fully responsible for its negligent actions and for
9 any failure on its part to perform as the contract requires. In short, BellSouth’s
10 negligence and other non-performance should be part of *BellSouth’s* cost of doing
11 business and not that of the Joint Petitioners. Thus, it is BellSouth that seeks to engage in
12 inappropriate cost shifting here. To properly allocate responsibility for negligence or
13 non-performance, Joint Petitioners’ proposed language for this issue should be adopted
14 and BellSouth’s proposed language should be rejected. *[Sponsored by: M. Johnson*
15 *(KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

16 **Q. MS. BLAKE SUGGESTS THAT BELLSouth NEGLIGENCE OR NON-**
17 **PERFORMANCE IS A RISK PROPERLY ALLOCATED TO JOINT**
18 **PETITIONERS AS A RESULT OF SOME BUSINESS DECISION YOU MAKE.**
19 **IS THAT CORRECT? [BLAKE AT 12:3-15:23]**

20 **A.** No, not at all. Indeed, we are here today to tell the Commission that we do not
21 voluntarily make a business decision to accept risks associated with BellSouth’s
22 negligence or non-performance. With our proposed language, Joint Petitioners are
23 simply seeking to ensure that BellSouth incurs a meaningful level of liability for its own

1 negligence/non-performance. We also are attempting to limit BellSouth's ability to
2 improperly shift those risks and associated costs to the Joint Petitioners. Notably, Joint
3 Petitioners' proposal applies equally to themselves as it does to BellSouth – each Party
4 must take some measure of responsibility for its negligent actions and other non-
5 performance. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey*
6 *(XSP)]*

7 **Q. PLEASE EXPLAIN YOUR CONTRACT LANGUAGE WHICH STATES THAT**
8 **THE PROPOSED LIABILITY FORMULA WOULD BEGIN AS OF THE DAY**
9 **THE CLAIM AROSE. [BLAKE AT 12:11-12; 13:1-6]**

10 **A.** In an effort to appease BellSouth's prior concern that the Joint Petitioners' proposed
11 language could provide incentive to Joint Petitioners to wait to file claims until several
12 months after the harm occurred in order to increase BellSouth's exposure, Joint
13 Petitioners revised their language. Accordingly, as now proposed, BellSouth's liability
14 exposure would begin the day on which the claim arose. Therefore, there could be no
15 "gaming" of the system, whereby the Joint Petitioners could hold-off filing of a
16 negligence claim for several months to increase the amount of potential liability under the
17 "rolling" 7.5% cap. This is a significant concession on the part of the Joint Petitioners to
18 fully address BellSouth's concern.

19 Despite the concession offered by Joint Petitioners, BellSouth now claims that the
20 Joint Petitioners could "inappropriately argue that the 'day the claim arose' was at the
21 end of the Agreement." *See Blake at 13:1-2.* BellSouth appears to be intent on creating
22 problems where there are none. To be sure, either Party could inappropriately argue a
23 position in almost any given context. It is difficult to contract around all contingencies –

1 especially with respect to behavior that would not be considered to be commercially
2 reasonable. The true test, however, should not be what is possible to argue but instead
3 should be what is probably likely to succeed when argued. In that sense, it appears that
4 Ms. Blake's manufactured concern regarding Joint Petitioners' ability to disguise the day
5 upon which a claim arose is both misplaced and overwrought.

6 Let us provide an example or two to illustrate. If one of the Joint Petitioners incurred
7 harm due to a BellSouth negligent act, say, for example, a BellSouth truck hit one of the
8 Petitioner's facilities, under the proposed language, there would be no question as to the
9 day the claim arose. Similarly if a BellSouth employee negligently damaged one of the
10 Petitioner's collocation sites, and that caused Petitioner's customers to lose service,
11 again, there would be no question as to the day the claim arose. Under both scenarios,
12 there is only one day on which that claim arose. BellSouth is simply searching for any
13 means to avoid a new limitation of liability clause that provides Joint Petitioners with
14 adequate protection from BellSouth negligent acts. It is simply time to hold BellSouth
15 accountable for its own negligence and to stop BellSouth from shifting those costs to its
16 competitors. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey*
17 *(XSP)]*

18 **Q. BELLSOUTH APPEARS TO ASSERT THAT "TELRIC" PRICING**
19 **NECESSITATES ITS ELIMINATION OF LIABILITY PROPOSAL. IS THAT**
20 **POSITION WELL FOUNDED? [BLAKE AT 11:7-20]**

21 **A.** No. BellSouth already factors the costs of insurance into its TELRIC pricing. Thus, Ms.
22 Blake's apparent claim that BellSouth's TELRIC prices were premised on a no-
23 insurance/no-liability scenario seems fundamentally off-base. In case there is any doubt,

1 let us make clear that Joint Petitioners are not in the business of insuring BellSouth
2 against any and all liability attributable to BellSouth's negligence or non-performance.
3 Moreover, Ms. Blake ignores the fact that BellSouth refuses to provide many of the
4 elements and services offered under the Agreement at TELRIC compliant prices. In
5 several instances, BellSouth's refusal to offer TELRIC-based pricing has evolved into an
6 arbitration issue. Examples of this would be multiplexing (27), line conditioning (38),
7 the TIC (65), expedite charges (88), mass migration charges (94) and LEC identifier
8 change charges (96). In certain other circumstances, Joint Petitioners accepted non-
9 TELRIC-based pricing as part of a settlement of an issue or a set of issues. Examples of
10 this would include certain aspects of interconnection trunk pricing, certain BellSouth
11 service calls, and various instances where BellSouth tariffs are referenced for rates. In
12 the end, this Agreement will contain certain elements and services at TELRIC-based
13 pricing and others that are not. Thus, even if BellSouth's reliance on TELRIC as an
14 excuse to shift responsibility for BellSouth negligence and non-performance to its
15 competitors was valid – which, as explained above, it is not – this argument provides
16 BellSouth with no cover whatsoever for the many aspects of the Agreement for which
17 TELRIC pricing does not apply. *[Sponsored by: M. Johnson (KMC), H. Russell*
18 *(NVX/NSC), J. Falvey (XSP)]*

1 **Q. MS. BLAKE ASSERTS THAT JOINT PETITIONERS' POSITION WITH**
2 **RESPECT TO THIS ISSUE (AS WELL AS WITH RESPECT TO ITEMS 5, 6**
3 **AND 7) IS PART OF SOME GRAND SCHEME THAT INVOLVES PUTTING**
4 **CLECS AT A COMPETITIVE ADVANTAGE OVER BELL SOUTH. IS SHE**
5 **RIGHT? [BLAKE AT 11:7-20]**

6 **A.** No, not at all. Again, BellSouth's negligence or non-performance is not a risk of our
7 business decisions. It is BellSouth that inappropriately seeks to shift risks here – not us.
8 And, by seeking to shift the risks associated with BellSouth negligence or non-
9 performance to Joint Petitioners, it is BellSouth that is seeking an unfair competitive
10 advantage over Joint Petitioners. *[Sponsored by: M. Johnson (KMC), H. Russell*
11 *(NVX/NSC), J. Falvey (XSP)]*

12 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
13 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

14 **A.** No. Ms. Blake's testimony is largely unfounded rhetoric designed to distract and steer
15 attention away from the real issue.⁹ BellSouth proposes an elimination of liability
16 provision under which it seeks to saddle Joint Petitioners with the costs and risks of
17 BellSouth's negligent acts and non-performance. When the rhetoric is stripped away, it
18 is quite plain that Ms. Blake provides no legal or sound policy basis for BellSouth's
19 position. It is time for BellSouth to accept some of the risks of and take some
20 responsibility for its own actions. Joint Petitioners' language requires both BellSouth and

⁹ BellSouth continuously argues that its terms are industry standard; however, the AllTel Agreement attached as Exhibit B to Joint Petitioners' Direct Testimony undermines BellSouth's position.

1 the Joint Petitioners to do this. *[Sponsored by: M. Johnson (KMC), H. Russell*
2 *(NVX/NSC), J. Falvey (XSP)]*

3
4 ***Item No. 5, Issue No. G-5 [Section 10.4.2]: To the extent***
5 ***that a Party does not or is unable to include specific***
6 ***limitation of liability terms in all of its tariffs and End User***
7 ***contracts (past, present and future), should it be obligated to***
8 ***indemnify the other Party for liabilities not limited?***

9
10 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 5/ISSUE G-5.**

11 **A.** Petitioners cannot limit BellSouth's liability in contractual arrangements wherein
12 BellSouth is not a party. Moreover, Petitioners will not indemnify BellSouth in any suit
13 based on BellSouth's failure to perform its obligations under this contract or to abide by
14 applicable law. Finally, BellSouth should not be able to dictate the terms of service
15 between Petitioners and their customers by, among other things, holding Petitioners liable
16 for failing to mirror BellSouth's limitation of liability and indemnification provisions in
17 CLEC's end user tariffs and/or contracts. To the extent that a CLEC does not, or is
18 unable to, include specific elimination-of-liability terms in all of its tariffs and customer
19 contracts (past, present and future), and provided that the non-inclusion of such terms is
20 commercially reasonable in the particular circumstances, that CLEC should not be
required to indemnify and reimburse BellSouth for that portion of the loss that would
have been limited (as to the CLEC but not as to non-contracting parties such as
BellSouth) had the CLEC included in its tariffs and contracts the elimination-of-liability
terms that BellSouth was successful in including in its tariffs at the time of such loss.

[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

1 **Q. IT APPEARS THAT MS. BLAKE THINKS THIS ISSUE IS ABOUT SERVICE**
2 **GUARANTEES, IS THAT THE CASE? [BLAKE AT 16:6-16]**

3 **A.** No. This issue is not about theoretical service guarantees that one Party or another could
4 offer its customers to distinguish otherwise comparable products. Rather, this issue is
5 simply about Joint Petitioners' unwillingness to guarantee (and assume indemnification
6 obligations to the extent they cannot) that they will for the life of the Agreement be able
7 to extract from their customers the same limitation of liability provisions that BellSouth
8 is able to extract. Instead we have offered to abide by a "commercially reasonable"
9 standard – which is eminently reasonable. The terms of our contracts with our customers
10 really should not be controlled directly or indirectly by BellSouth but should instead be
11 governed by what is commercially reasonable.

12 BellSouth's proposal is not commercially reasonable. Once again, BellSouth
13 appears to insist that Joint Petitioners must serve as BellSouth's insurance company. We
14 won't do that voluntarily. We are not insurance companies and we are unwilling to
15 accept responsibility for BellSouth's non-performance. If there is a claim or valid theory
16 of liability under which third parties can sue BellSouth for non-performance or other
17 failure to abide by this Agreement, we have no legal obligation to ensure that BellSouth
18 can quash such claims or to indemnify BellSouth if it cannot. Moreover, there is no other
19 compelling public policy reason for us to do so. If BellSouth's actions cause consumers
20 harm, BellSouth should be held accountable. In any event, there is simply no basis for
21 trying, as BellSouth does, to shift some of the responsibility for and risks of BellSouth's
22 failures to Joint Petitioners.

1 Finally, it bears noting that we can no more bind BellSouth to the terms of a service
2 guarantee with a third party than we can bind third parties to the terms of this Agreement.
3 The best resolution of this issue would be for the Agreement to contain no language on it.
4 *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

5 **Q. IS BELL SOUTH CORRECT THAT PETITIONERS COULD IMPOSE “SELF-**
6 **CREATED LIABILITY” ON BELL SOUTH BY VIRTUE OF PROMISING**
7 **PERFECTION TO THEIR CUSTOMERS? [BLAKE AT 16:21-17:8]**

8 **A.** No. In refusing to agree to BellSouth’s proposed language for Section 10.4.2, Joint
9 Petitioners are not seeking to “pass on to BellSouth ... self-created liability” in the
10 manner Ms. Blake portrays. *See* Blake at 17:1. Joint Petitioners, however, insist that
11 they be able to conduct business in a commercially reasonable manner (which requires
12 them to mitigate damages and not to unreasonably create liability exposure) and that
13 BellSouth not be permitted to shirk all responsibility for its failure to abide by the
14 Agreement and to perform as specified therein. If we make unreasonable commitments
15 to our customers, it is not at all clear to us how we could seek to hold BellSouth
16 accountable for such commitments. Indeed, Joint Petitioners will agree to the duty to
17 mitigate damages, and thus BellSouth’s exposure, with respect to our end users.
18 Petitioners’ willingness to take on this duty demonstrates that we are not seeking to
19 impose unfair or unwarranted liability on BellSouth. Rather, Petitioners are simply
20 refusing to agree that all of our tariffs and contracts contain language that BellSouth —
21 who is not a party to any such arrangement — believes is appropriate. *[Sponsored by:*
22 *M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

1 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
2 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

3 **A.** No. But, Ms. Blake's testimony makes it evident to us that BellSouth's primary concern
4 here is over instant payment service guarantees and BellSouth's potential for additional
5 liability attributable to its own failure to abide by or perform as required by the
6 Agreement. BellSouth's current proposed provision is a needlessly blunt instrument that
7 does not squarely address that concern and creates others in the process. If BellSouth
8 wanted to withdraw its current proposal and replace it with language to address its stated
9 concern regarding potential liability for instant payment service guarantees, we would
10 entertain the proposal and hopefully be able to reach an acceptable compromise on this
11 issue. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

12 **Q. DO YOU HAVE ANYTHING YOU WISH TO ADD?**

13 **A.** Yes. BellSouth is placing undue reliance on its own over-generalization, mis-
14 construction and misconception of Joint Petitioners' tariffs. As we have stated
15 previously, our customers rarely purchase service from Joint Petitioners' tariffs. Like
16 BellSouth, we use CSAs. Unlike BellSouth, we are prepared to testify that our CSAs do
17 contain limitation of liability provisions that deviate from those found in our tariffs.
18 Thus, while BellSouth seeks to hinder our ability (by imposing additional costs) to agree
19 to commercially reasonable provisions that include less than the maximum limitation of
20 liability allowed by law, BellSouth seeks to retain its own unhindered right to do so and
21 thereby gain competitive advantage over Joint Petitioners. Accordingly, BellSouth's
22 proposed language is anticompetitive and unnecessary – and it should be rejected.

Item No. 6, Issue No. G-6 [Section 10.4.4]: Should the Agreement expressly state that liability for claims or suits for damages incurred by CLEC's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?

3 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 6/ISSUE G-6.**

4 **A.** An express statement is needed because the limitation of liability terms in the Agreement
 5 should in no way be read so as to preclude damages that CLECs' customers incur as a
 6 foreseeable result of BellSouth's performance of its obligations under the Agreement,
 7 including its provisioning of UNEs and other services. Damages to customers that result
 8 directly, proximately, and in a reasonably foreseeable manner from BellSouth's (or a
 9 CLEC's) performance of obligations set forth in the Agreement that were not otherwise
 10 caused by, or are the result of, a CLEC's (or BellSouth's) failure to act at all relevant
 11 times in a commercially reasonable manner in compliance with such Party's duties of
 12 mitigation with respect to such damage should be considered direct and compensable
 13 under the Agreement for simple negligence or nonperformance purposes. *[Sponsored*
 14 *by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

15 **Q. PLEASE EXPLAIN WHAT TYPE OF LOSSES FOR WHICH JOINT**
 16 **PETITIONERS WANT TO BE MADE WHOLE BY BELL SOUTH UNDER**
 17 **SECTION 10.4.4.**

18 **A.** Petitioners believe that BellSouth should be responsible for reasonably foreseeable
 19 damages that are directly and proximately caused by BellSouth. As stated in the
 20 Petitioners' direct testimony, this Agreement is a contract for wholesale services and,

1 therefore, liability to customers must be contemplated and expressly included in the
2 contract language. In our view, these types of damages are not incidental, indirect or
3 consequential. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey*
4 *(XSP)]*

5 **Q. MS. BLAKE STATES THAT THE PARTIES HAVE AGREED THAT THE**
6 **CONTRACT SHALL PROVIDE THAT THERE WILL BE NO LIABILITY FOR**
7 **INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES AND ASSERTS**
8 **THAT JOINT PETITIONERS ARE IN SOME MANNER ATTEMPTING TO**
9 **EVISCERATE THAT AGREEMENT. IS THAT AN ACCURATE AND FAIR**
10 **REPRESENTATION OF THE DISPUTE UNDERLYING THIS ISSUE? [BLAKE**
11 **AT 19:23-20:9]**

12 **A.** No. Joint Petitioners did not agree to one thing and then attempt to gut that agreement
13 with the added language we propose. Rather our offer is (and has been) to eliminate
14 liability for indirect, incidental, or consequential damages, provided that it is understood
15 that such limitation is not to be construed in any way so as to eliminate the liability of a
16 Party for claims or suits by damages by end users/customers of the other Party or by such
17 other Party vis-à-vis (meaning “in relation to”) its end users/customers to the extent that
18 such damages “result directly and in a reasonably foreseeable manner from the first
19 Party’s performance of services hereunder”. We do not view such damages as indirect,
20 incidental, or consequential and we want the Agreement to be clear that we do not
21 voluntarily agree to do so. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC),*
22 *J. Falvey (XSP)]*

1 **Q. MS. BLAKE ASSERTS OPPOSITION TO JOINT PETITIONERS' PROPOSAL**
2 **BECAUSE IT IS LENGTHY, VAGUE AND IN HER WORDS "VIRTUALLY**
3 **INDECIPHERABLE". DO YOU HAVE A RESPONSE TO THESE**
4 **CRITICISMS? [BLAKE AT 20:21-21:2]**

5 **A.** Yes. First, if Ms. Blake has any real difficulty understanding our proposal it is likely
6 because she chooses not to understand it. Ms. Blake did not participate in the majority of
7 negotiations session where this issue and the Joint Petitioners' proposal were discussed
8 and explained at great length. We did not leave those discussions with the impression
9 that BellSouth didn't understand our proposal, but rather that they simply would not
10 agree to it. So as not to needlessly expend the Commission's or Joint Petitioners'
11 resources, BellSouth should in the future take better care to ensure that its witnesses are
12 fully briefed with respect to all prior negotiations.

13 The language proposed by Petitioners here and that is disputed by BellSouth is notably
14 shorter than the language proposed by BellSouth and disputed by the Joint Petitioners on
15 the previous issue. The point is that lengthy language is not necessarily good or bad.
16 Nor is it necessarily confusing. Sometimes, contract language becomes lengthy as a
17 result of efforts to ensure that it is clear and fair. In this case, Joint Petitioners took care
18 to delineate a precise standard that is neither vague nor difficult to implement. We even
19 took care to assure BellSouth that it was our intent to conduct ourselves in a
20 commercially reasonable manner and to accept standard duties to mitigate damages.
21 Nevertheless, if BellSouth wants a shorter proposal, we are willing to strike the final
22 three or so lines of it so that the disputed language would end with the clause "to the
23 extent such damages result directly and in a reasonably foreseeable manner from the first

1 Party's performance of services hereunder". The remaining part of the disputed language
2 proposed by Joint Petitioners can be stricken: "and were not and are not directly and
3 proximately caused by or the result of such Party's failure to act at all relevant times in a
4 commercially reasonable manner in compliance with such Party's duties of mitigation
5 with respect to such damage". That language was intended to provide BellSouth with
6 assurances that the proposal is fair and reasonable – we will not insist on it. At bottom,
7 Ms. Blake does not explain why she thinks this provision would be difficult or confusing
8 to implement or whether it is simply BellSouth's intention to make this provision difficult
9 or confusing to implement. Neither case presents a valid reason for rejecting Joint
10 Petitioners' proposal. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.*
11 *Falvey (XSP)]*

12 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
13 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

14 **A.** No. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

15
16

<i>Item No. 7, Issue No. G-7 [Section 10.5]: What should the indemnification obligations of the parties be under this Agreement?</i>
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17 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 7/ ISSUE G-7.**

18 **A.** The Party providing service under the Agreement should be indemnified, defended and
19 held harmless by the Party receiving services against any claim for libel, slander or
20 invasion of privacy arising from the content of the receiving Party's own
21 communications. Additionally, customary provisions should be included to specify that
22 the Party receiving services under the Agreement should be indemnified, defended and

1 held harmless by the Party providing services against any claims, loss or damage to the
2 extent reasonably arising from: (1) the providing Party's failure to abide by Applicable
3 Law, or (2) injuries or damages arising out of or in connection with this Agreement to the
4 extent caused by the providing Party's negligence, gross negligence or willful misconduct.

5 *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

6 **Q. PLEASE EXPLAIN THE INDEMNIFICATION LANGUAGE THAT JOINT**
7 **PETITIONERS HAVE PROPOSED.**

8 **A.** Joint Petitioners seek to be indemnified for claims of libel, slander, or invasion of
9 privacy. On that, the Parties agree. Petitioners also seek to be indemnified for claims
10 arising from (1) BellSouth's failure to comply with the law, or (2) damages or injuries
11 arising from BellSouth's negligence, gross negligence, or willful misconduct. This level
12 of indemnification is not unreasonable. Moreover, Joint Petitioners, as the Parties
13 receiving/purchasing most services under the Agreement, refuse to indemnify BellSouth
14 against all end user claims that could potentially arise as a result of our reliance on
15 BellSouth's commitment to abide by and perform as required under this Agreement. A
16 Party that fails to abide by its legal obligations should incur the damages arising from
17 such conduct. A Party that is negligent should bear the cost of its own mistakes.
18 BellSouth should not be permitted to shift those costs to the Joint Petitioners. Thus, Joint
19 Petitioners do not believe that the party receiving services should indemnify the party
20 providing services from "any claim, loss or damage claimed by the end user of the party
21 receiving services arising out of the Agreement." *[Sponsored by: M. Johnson (KMC), H.*
22 *Russell (NVX/NSC), J. Falvey (XSP)]*

1 **Q. IS BELL SOUTH CORRECT IN ASSERTING THAT THE JOINT**
2 **PETITIONERS' PROPOSED LANGUAGE IS INAPPROPRIATE BECAUSE**
3 **THIS IS NOT A COMMERCIAL AGREEMENT? [BLAKE AT 22:8-24]**

4 **A.** No. This Agreement, although it contains terms that are the subject of federal and state
5 statutes and regulations, is clearly a commercial agreement. BellSouth's efforts to impart
6 magical meaning into the words "commercial agreement" are unavailing. Indeed, we are
7 not aware of any State Commission that has bought into BellSouth's argument that there
8 is a body of agreements called interconnection agreements and another body of
9 agreements called commercial agreements and that the two are mutually exclusive.
10 Notably, there are no regulations of which we are aware governing what the
11 indemnification provisions of interconnection agreements must be. Thus, the language in
12 Section 10.5 should reflect and comport with general commercial practice. It is generally
13 accepted commercial practice to ensure that one Party does not pay for or otherwise
14 suffer as a result of the other's mistakes or misconduct. That principle is embodied in
15 Joint Petitioners' proposed language and not in the commercially unreasonable language
16 proposed by BellSouth. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.*
17 *Falvey (XSP)]*

18 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
19 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

20 **A.** No. BellSouth once again seeks to shift to Joint Petitioners the risks and costs associated
21 with its own non-compliance and misconduct. Joint Petitioners' proposal rejects that
22 approach, reflects commercially reasonable practice and should be accepted. *[Sponsored*
23 *by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

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Item No. 8, Issue No. G-8 [Section 11.1]: This issue has been resolved.

Item No. 9, Issue No. G-9 [Section 13.1]: Should a court of law be included in the venues available for initial dispute resolution?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 9/ISSUE G-9.

A. Either Party should be able to petition the Commission, the FCC, or a court of law for resolution of a dispute. No legitimate dispute resolution venue should be foreclosed to the Parties. The industry has experienced difficulties in achieving efficient regional dispute resolution. Moreover, there is an ongoing debate as to whether State Commissions have jurisdiction to enforce agreements (CLECs do not dispute that authority) and as to whether the FCC will engage in such enforcement. There is no question that courts of law have jurisdiction to entertain such disputes (*see* GTC, Sec. 11.5); indeed, in certain instances, they may be better equipped to adjudicate a dispute and may provide a more efficient alternative to litigating before up to 9 different State Commissions or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts. [*Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)*]

1 **Q. BELLSOUTH HAS PROPOSED REVISED LANGUAGE THAT WOULD**
2 **ALLOW DISPUTES TO GO TO A COURT OF LAW IN CERTAIN INSTANCES.**
3 **WHY IS THAT LANGUAGE NOT ACCEPTABLE? [BLAKE AT 23:13-19; 24:19-**
4 **25]**

5 **A.** As explained in our direct testimony, BellSouth's proposal unnecessarily builds in
6 opportunities for dispute over when the conditions for taking a case to court have been
7 met and imposes inefficiencies by requiring that certain claims be separated. We would
8 prefer not to close or partially restrict the option of going to a court of competent
9 jurisdiction for dispute resolution. When faced with the decision to file a complaint at the
10 Commission, the FCC or a court, we will have to weigh the pros and cons of each venue
11 (expertise and scope of jurisdiction would be among the factors) and assess them based
12 on the totality of the dispute between the Parties – which could easily extend beyond the
13 South Carolina Agreement. We find ourselves in need of efficient and effective
14 enforcement regionally – not just in South Carolina. Accordingly, we will not voluntarily
15 give up the option of going to a court of competent jurisdiction, as such a court may
16 provide a means by which we can avoid having to litigate nine times over (or more) or to
17 discount settlement positions as a result of regional dispute resolution difficulties which
18 BellSouth has used to its advantage and seeks to preserve. *[Sponsored by: M. Johnson*
19 *(KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

20 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
21 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

22 **A.** No, not at this time. However, we will continue to consider potential compromises and
23 may respond to BellSouth's latest proposal (which is a considerable improvement over its

1 initial proposal) with new language designed to settle or at least narrow the issue further.

2 *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

3
4 ***Item No. 10, Issue No. G-10 [Section 17.4]: This issue has been resolved.***

5 ***Item No. 11, Issue No. G-11 [Sections 19, 19.1]: This issue has been resolved.***

6 ***Item No. 12, Issue No. G-12 [Section 32.2]: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?***

7 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 12/ISSUE G-12.**

8 **A.** Nothing in the Agreement should be construed to limit a Party's rights or exempt a Party
9 from obligations under Applicable Law, as defined in the Agreement, except in such
10 cases where the Parties have explicitly agreed to a limitation or exemption. Moreover,
11 silence with respect to any issue, no matter how discrete, should not be construed to be such
12 a limitation or exception. This is a basic legal tenet and is consistent with both federal
13 and Georgia law (agreed to by the parties), and it should be explicitly stated in the
14 Agreement in order to avoid unnecessary disputes and litigation that has plagued the
15 Parties in the past. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey*
16 *(XSP)]*

1 **Q. BELLSOUTH CLAIMS JOINT PETITIONERS SEEK “TWO OPPORTUNITIES**
2 **TO NEGOTIATE AND/OR ARBITRATE THE TERMS OF THE CONTRACT”.**
3 **HOW DO YOU RESPOND TO THIS ACCUSATION? [BLAKE AT 25:16-18]**

4 **A.** Our first response is that it isn't true. The Parties have agreed to abide by Georgia law,
5 and Georgia law – just like any other that we know of – holds that applicable law existing
6 at the time of contracting becomes part of the contract as though expressly stated therein,
7 unless the parties voluntarily and expressly agree to adhere to other standards that
8 effectuate an exception to or displacement of applicable legal requirements. As
9 explained at length in our direct testimony, BellSouth seeks to turn principles of
10 contracting on their head by insisting on a contract where exceptions to and the
11 displacement of applicable legal requirements is implied as a matter of course. As our
12 counsel will surely explain in briefing, Georgia law requires exceptions, or other
13 displacements of applicable legal requirements, to be express. They cannot be implied.
14 In short, exceptions are not the rule.

15 Moreover, as we have said repeatedly, we did not conduct negotiations or engage in
16 this arbitration so that we could give away something for nothing. If BellSouth wants to
17 be exempt from or to displace an applicable legal requirement, it should have proposed
18 explicit language regarding the specific aspects of any federal or state statute, rule or
19 order to which they did not want to have to comply and they should have been prepared
20 to offer an appropriate concession to us in exchange for the right or rights they seek to
21 have us give up.

1 Instead, BellSouth's latest proposal seeks to contractualize a gambit wherein BellSouth
2 can claim that it is not obligated to comply with Applicable Law if it is not copied into or
3 otherwise sufficiently referenced in the Agreement (we are not clear as to what would
4 pass muster). Petitioners' language already references all Applicable Law and it
5 underscores their intent not to deviate from already agreed-upon Georgia law on this
6 point. There are thousands of pages of applicable federal and state statutes, rules and
7 orders that have not been copied into or regurgitated in some manner in the Agreement.
8 We are not interested in providing BellSouth with the opportunity to say that the
9 requirements contained therein apply only prospectively – after we detect and notify
10 BellSouth of its non-compliance therewith. *[Sponsored by: M. Johnson (KMC), H.*
11 *Russell (NVX/NSC), J. Falvey (XSP)]*

12 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
13 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

14 **A.** No. We are not prepared to trade tried and true principles of contracting for BellSouth's
15 "catch me and we'll fix it going forward" proposal. Our agreement to abide by Georgia
16 law did not contemplate and does not include such a perverse exception to that body of
17 law. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

18
19 *Item No. 13, Issue No. G-13 [Section 32.3]: This issue has
been resolved.*

20
21 *Item No. 14, Issue No. G-14 [Section 34.2]: This issue has
been resolved.*

*Item No. 15, Issue No. G-15 [Section 45.2]: This issue has
been resolved.*

Item No. 16, Issue No. G-16 [Section 45.3]: This issue has been resolved.

RESALE (ATTACHMENT 1)

Item No. 17, Issue No. 1-1 [Section 3.19]: This issue has been resolved.

Item No. 18, Issue No. 1-2 [Section 11.6.6]: This issue has been resolved.

NETWORK ELEMENTS (ATTACHMENT 2)

Item No. 19, Issue No. 2-1 [Section 1.1]: This issue has been resolved.

Item No. 20, Issue No. 2-2 [Section 1.2]: This issue has been resolved.

Item No. 21, Issue No. 2-3 [Section 1.4.1]: This issue has been resolved.

Item No. 22, Issue No. 2-4 [Section 1.4.3]: This issue has been resolved.

Item No. 23, Issue No. 2-5 [Section 1.5]: What rates, terms, and conditions should govern the CLECs' transition of existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?

Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the Commission refer this issue to the generic change-of-law docket for initial resolution and the reincorporation back into this docket for appropriate incorporation into the arbitrated interconnection agreements. If the Commission declines to grant such motion, or if one is not filed, Joint Petitioners reserve the right to supplement this testimony.

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Item No. 24, Issue No. 2-6 [Section 1.5.1]: This issue has been resolved.

Item No. 25, Issue No. 2-7 [Section 1.6.1]: This issue has been resolved.

Item No. 26, Issue No. 2-8 [Section 1.7]: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 26/ISSUE 2-8.

A. BellSouth should be required to “commingle” UNEs or Combinations of UNEs with any service, network element, or other offering that it is obligated to make available pursuant to Section 271 of the Act. By that we mean that BellSouth should be required to permit commingling and should be required to perform the functions necessary to commingle a Section 251 UNE or UNE combination with any wholesale service, including those obtained from BellSouth pursuant to any method other than Section 251 unbundling (this would include Section 271 unbundling). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. IS BELL SOUTH’S RELIANCE ON THE FCC’S TRO ERRATA APPROPRIATE?
[BLAKE AT 30:17-31:8]

A. No. In fact, BellSouth’s reliance is misplaced. There is no FCC rule or order that states that BellSouth is permitted to place commingling restrictions on section 271 elements. The part of the FCC’s errata relied upon by BellSouth was nothing more than an attempt to clean-up stray language from a section of the TRO addressing the commingling of section 251 UNEs with services provided for resale under section 251(c)(4). BellSouth’s attempt to create by implication an affirmative adoption of commingling restrictions with

1 respect to section 271 elements cannot withstand scrutiny, as it simply cannot be squared
2 with the FCC's commingling rules and the TRO language accompanying those rules.

3 Moreover, the fact that the errata also deleted the final sentence in footnote 1990 of the
4 TRO is fatal to BellSouth's position. Footnote 1990 originally read:

5 We decline to require BOCs, pursuant to section 271, to combine network
6 elements that no longer are required to be unbundled under section 251. Unlike
7 section 251(c)(3), items 4-6 and 10 of section 271's competitive checklist contain
8 no mention of "combining" and, as noted above, do not refer back to the
9 combination requirement set forth in Section 251(c)(3). We also decline to apply
10 our commingling rule, set forth in Part VII.A. above, to services that must be
11 offered pursuant to these checklist items.

12 The errata, however, struck the final sentence, and footnote 1990 now reads:

13 We decline to require BOCs, pursuant to section 271, to combine network
14 elements that no longer are required to be unbundled under section 251. Unlike
15 section 251(c)(3), items 4-6 and 10 of section 271's competitive checklist contain
16 no mention of "combining" and, as noted above, do not refer back to the
17 combination requirement set forth in Section 251(c)(3).

18
19 Thus, it is absolutely clear that the FCC did not find that ILECs such as BellSouth are not
20 required to commingle section 271 elements with section 251 UNEs. *[Sponsored by: M.*
21 *Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

22 **Q. DOES THE D.C. CIRCUIT'S *USTA II* HOLDING REGARDING SECTION 271**
23 **PROHIBIT THE COMMINGLING OF UNES, UNE COMBINATIONS, AND**
24 **SERVICES? [BLAKE AT 31:23-32:15]**

25 **A.** No. The D.C. Circuit's *USTA II* holding discussed *combining*, not *commingling*.
26 BellSouth's reliance on the D.C. Circuit as grounds to reject Petitioners' commingling
27 language is therefore misplaced. *[Sponsored by: M. Johnson (KMC), H. Russell*
28 *(NVX/NSC), J. Falvey (XSP)]*

1 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
2 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

3 **A.** No. As stated in the Joint Petitioners direct testimony, the TRO concluded that CLECs
4 may commingle UNEs or UNE combinations with facilities or services it has obtained
5 from ILECs pursuant to a method other than unbundling under 251(c)(3) of the Act.
6 section 271 is another method of unbundling and BellSouth's attempt to isolate and
7 render useless section 271 elements must be squarely rejected. *[Sponsored by: M.*
8 *Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

9 **Q. MS. BLAKE STATES THAT THIS ISSUE SHOULD BE MOVED TO THE**
10 **GENERIC PROCEEDING FOR CONSIDERATION AND RESOLUTION.**
11 **[BLAKE AT 7:1-5; 29:21-23]. DO YOU AGREE?**

12 **A.** Absolutely not. This issue has been part of the arbitration since day one and, per section
13 252, Joint Petitioners have a right to have this issue decided in this arbitration. The fact
14 that this issues is, as BellSouth says, "likely" to be addressed in the generic proceeding is
15 insufficient cause for removal. The Florida Commission already has rejected the same
16 request made by BellSouth there and we believe that Tennessee, Kentucky and others
17 will follow suit. Unless the Joint Petitioners voluntarily agree to have an issue moved
18 outside the arbitration, we do not believe that an issue can be removed at the request of
19 the respondent, BellSouth. If BellSouth wishes to pursue its request, it should file a
20 proper motion and the Joint Petitioners should be afforded ample opportunity to file an
21 opposition (as they were afforded in Florida, Tennessee and Kentucky). *[Sponsored by:*
22 *M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 27, Issue No. 2-9 [Section 1.8.3]: ***This issue has been resolved.***

Item No. 28, Issue No. 2-10 [Section 1.9.4]: ***This issue has been resolved.***

Item No. 29, Issue No. 2-11 [Section 2.1.1]: ***This issue has been resolved.***

Item No. 30, Issue No. 2-12 [Section 2.1.1.1]: ***This issue has been resolved.***

Item No. 31, Issue No. 2-13 [Section 2.1.1.2]: ***This issue has been resolved.***

Item No. 32, Issue No. 2-14 [Sections 2.1.2, 2.1.2.1, 2.1.2.2]: ***This issue has been resolved.***

Item No. 33, Issue No. 2-15 [Section 2.2.3]: ***This issue has been resolved.***

Item No. 34, Issue No. 2-16 [Section 2.3.3]: ***This issue has been resolved.***

Item No. 35, Issue No. 2-17 [Sections 2.4.3, 2.4.4]: ***This issue has been resolved.***

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Item No. 36, Issue No. 2-18 [Section 2.12.1]: (A) How should Line Conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to Line Conditioning?

2
3 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 36(A)/ISSUE 2-**
4 **18(A).**

5 **A.** Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR
6 51.319 (a)(1)(iii)(A). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.*
7 *Falvey (XSP)]*

8 **Q. DOES BELLSOUTH'S PROPOSED LINE CONDITIONING DEFINITION**
9 **COMPORT WITH THE GOVERNING FCC RULE? [FOGLE AT 3:13-4:9]**

10 **A.** No. BellSouth ignores the FCC's line conditioning rule and instead attempts to replace it
11 with selected language from the TRO. The FCC, however, did not choose to replace the
12 language of its rule with the "definition" that BellSouth claims to embrace. As explained
13 in our direct testimony, BellSouth inappropriately seeks to conflate line conditioning
14 obligations with routine network modification requirements. The FCC's rules, however,
15 do not support BellSouth's position, as the line conditioning rule was not replaced with
16 the routine network modification rules and BellSouth's line conditioning obligations are
17 not limited to those routine network modifications it undertakes to provide DSL services
18 to its own customers. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.*
19 *Falvey (XSP)]*

1 **Q. DOES THE JOINT PETITIONERS' POSITION REQUIRE BELL SOUTH TO**
2 **CREATE A "SUPERIOR NETWORK", AS MR. FOGLE CLAIMS? [FOGLE AT**
3 **5:23]**

4 **A.** No. The FCC's line conditioning rules require BellSouth to modify its existing network
5 rather than develop a superior one. *[Sponsored by: M. Johnson (KMC), H. Russell*
6 *(NVX/NSC), J. Falvey (XSP)]*

7 **Q. DID ANYTHING MR. FOGLE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU**
8 **TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

9 **A.** No. BellSouth's attempt to limit its line conditioning obligations to routine network
10 modifications it undertakes to provide DSL to its own customers is inconsistent with the
11 FCC's line conditioning rule and it should be rejected. Mr. Fogle claims that "the TRO
12 clarifies the definition of line conditioning set forth in Rule 51.319(a)(1)(iii) by limiting
13 its application to line conditioning 'that incumbent LECs regularly perform in order to
14 provide xDSL services to their own customers.'" *See Fogle at 6:8-11.* In other words,
15 Mr. Fogle claims that the FCC's definition of line conditioning has no meaning, as the
16 ILECs (according to his novel theory) are not obligated to perform line conditioning.
17 That cannot be right. BellSouth acknowledges that FCC Rule 51.319(a) sets forth the
18 definition for line conditioning, but argues that the TRO itself only requires BellSouth to
19 perform line conditioning that it regularly performs for its own customers. *See Fogle at*
20 *6:8-15.* Although the FCC, in the TRO, opines that line conditioning can be seen as a
21 routine network modification that ILECs perform for their own DSL customers, the FCC
22 does not say that the line conditioning obligation is limited to such routine network
23 modifications that ILECs perform for their own DSL customers. Nor does it say that if

1 an ILEC refuses to provide such line conditioning to its own customers, it is relieved of
2 its obligation to provide line conditioning to requesting CLECs. BellSouth must adhere
3 to the definition of line conditioning in 51.319(a). The FCC in paragraph 172 of the *UNE*
4 *Remand Order* held that ILECs "are required to condition loops so as to allow **requesting**
5 **carriers** to offer advanced services." Subsequently, in paragraph 83 of the *Line Sharing*
6 *Order*, the FCC expanded this obligation to apply to loops regardless of the loop length.
7 If the FCC meant to curtail the obligation set forth therein with the TRO language Mr.
8 Fogle quotes, it would certainly have modified the actual definition of line conditioning.
9 The FCC did no such thing. By attempting to unilaterally limit its line conditioning
10 obligations, BellSouth is trying to ensure that CLECs can do no more with the network
11 than BellSouth is willing to do. As explained in our direct testimony, there are no
12 compelling legal or policy rationales for tying us down in that manner and keeping us and
13 our customers in that box. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC),*
14 *J. Falvey (XSP)]*

15 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 36(B)/ISSUE 2-**
16 **18(B).**

17 **A.** BellSouth should perform Line Conditioning in accordance with FCC Rule 47 CFR
18 51.319 (a)(1)(iii). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey*
19 *(XSP)]*

1 **Q. DO YOU AGREE WITH BELL SOUTH'S ASSERTION THAT IT SHOULD**
2 **ONLY PERFORM LINE CONDITIONING FUNCTIONS IN ACCORDANCE**
3 **WITH FCC RULES TO THE EXTENT IT REGULARLY UNDERTAKES SUCH**
4 **MODIFICATIONS FOR ITS OWN XDSL CUSTOMERS? [FOGLE AT 6:8-11]**

5 **A.** No. Mr. Fogle plainly indicates that BellSouth is only willing to comply with the FCC's
6 line conditioning rule to a certain extent. We insist on full compliance. As reiterated
7 throughout our testimony on this issue, line conditioning is not synonymous with or
8 limited to the routine network modifications BellSouth undertakes to provide xDSL to its
9 own customers. Rather, BellSouth must provide line conditioning in accordance with
10 FCC's Rule 51.319(a)(1)(iii), which does not contain the limiting caveat Mr. Fogle adds.
11 *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

12 **Q. DID ANYTHING MR. FOGLE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU**
13 **TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

14 **A.** No. BellSouth is attempting to unilaterally limit its obligation to provide line
15 conditioning as required by the FCC's line conditioning rule. Since Joint Petitioners are
16 unwilling to accept it, the Commission should reject BellSouth's proposed language that
17 would eliminate certain aspects of BellSouth's obligation to provide and Joint
18 Petitioners' right to obtain line conditioning at TELRIC-compliant rates. *[Sponsored by:*
19 *M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

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2 **Q. MS. BLAKE STATES THAT THIS ISSUE SHOULD BE MOVED TO THE**
3 **GENERIC PROCEEDING FOR CONSIDERATION AND RESOLUTION.**

4 **[BLAKE AT 7:1-5]. DO YOU AGREE?**

5 **A.** Absolutely not. This issue has been part of the arbitration since day one and, per section
6 252, Joint Petitioners have a right to have this issue decided in this arbitration. The fact
7 that this issues is, as BellSouth says, “likely” to be addressed in the generic proceeding is
8 insufficient cause for removal. Moreover, Ms. Blake’s assertion seems wrong as there is
9 not a single line conditioning issue that has been identified on the regional issues list
10 being developed for the generic proceeding. Notably, the Florida Commission already
11 has rejected the same request made by BellSouth there and we believe that Tennessee,
12 Kentucky and others will follow suit. Unless the Joint Petitioners voluntarily agree to
13 have an issue moved outside the arbitration, we do not believe that an issue can be
14 removed at the request of the respondent, BellSouth. If BellSouth wishes to pursue its
15 request, it should file a proper motion and the Joint Petitioners should be afforded ample
16 opportunity to file an opposition (as they were afforded in Florida, Tennessee and
17 Kentucky). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey*
18 *(XSP)]*

Item No. 37, Issue No. 2-19 [Section 2.12.2]: *Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 37/ISSUE 2-19.

A. The Agreement should not contain specific provisions limiting the availability of Line Conditioning (in this case, load coil removal) to copper loops of 18,000 feet or less in length. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. PLEASE EXPLAIN WHY THE AGREEMENT SHOULD REQUIRE BELL SOUTH TO REMOVE LOAD COILS, REGARDLESS OF LOOP LENGTH.

A. Rule 51.319(a)(iii) states that load coils are a type of device that ILECs should remove from a loop at a CLEC's request. It does not state that load coils on loops over 18,000 feet in length are exempt from removal. The FCC's *Line Sharing Order* held that ILECs are required to condition loops, *regardless of the loop length*, to allow requesting carriers to offer advanced services. BellSouth's proposed language thus once again fails to follow the FCC's line conditioning rule. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. IS IT RELEVANT THAT BELL SOUTH ASSERTS THAT IT DOES NOT REMOVE LOAD COILS FROM LOOPS OVER 18,000 FEET IN LENGTH FOR ITS OWN CUSTOMERS? [FOGLE AT 7:5-7]

A. No. As explained above with respect to Item 36/Issue 2-18, FCC Rule 51.319(a)(iii) does not state that line conditioning is a routine network modification. Accordingly, BellSouth is not entitled to limit line conditioning activities to only those that it does to provide

1 xDSL to its retail customers. Notably, BellSouth claims that it will not remove load coils
2 on long loops, even though it concedes that load coils impair DSL service. *See* Fogle at
3 4:5-7. BellSouth should not foist its unwillingness to innovate on its competitors (or their
4 customers). *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

5 **Q. DID ANYTHING MR. FOGLE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU**
6 **TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

7 **A.** No. Once again, we urge the Commission to reject BellSouth's attempt to impose upon
8 Joint Petitioners its own reduced obligation re-write of the FCC's line conditioning
9 requirements. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey*
10 *(XSP)]*

11 **Q. MS. BLAKE STATES THAT THIS ISSUE SHOULD BE MOVED TO THE**
12 **GENERIC PROCEEDING FOR CONSIDERATION AND RESOLUTION.**
13 **[BLAKE AT 7:1-5]. DO YOU AGREE?**

14 **A.** Absolutely not. This issue has been part of the arbitration since day one and, per section
15 252, Joint Petitioners have a right to have this issue decided in this arbitration. The fact
16 that this issues is, as BellSouth says, "likely" to be addressed in the generic proceeding is
17 insufficient cause for removal. Moreover, Ms. Blake's assertion seems wrong as there is
18 not a single line conditioning issue that has been identified on the regional issues list
19 being developed for the generic proceeding. Notably, the Florida Commission already
20 has rejected the same request made by BellSouth there and we believe that Tennessee,
21 Kentucky and others will follow suit. Unless the Joint Petitioners voluntarily agree to
22 have an issue moved outside the arbitration, we do not believe that an issue can be
23 removed at the request of the respondent, BellSouth. If BellSouth wishes to pursue its

1 request, it should file a proper motion and the Joint Petitioners should be afforded ample
2 opportunity to file an opposition (as they were afforded in Florida, Tennessee and
3 Kentucky). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey*
4 *(XSP)]*

Item No. 38, Issue No. 2-20 [Sections 2.12.3, 2.12.4]:
Under what rates, terms and conditions should BellSouth be
required to perform Line Conditioning to remove bridged
taps?

6
7 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 38/ISSUE 2-20.**

8 **A.** Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged
9 tap will be modified, upon request from CLEC, so that the loop will have a maximum of
10 6,000 feet of bridged tap. This modification will be performed at no additional charge to
11 CLEC. Line Conditioning orders that require the removal of other bridged tap should be
12 performed at the rates set forth in Exhibit A of Attachment 2. *[Sponsored by: M.*
13 *Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

14 **Q. WHAT IS THE PRIMARY DISAGREEMENT REGARDING THIS ISSUE?**

15 **A.** The primary disagreement is over BellSouth's desire to charge non-TELRIC Special
16 Construction rates when Joint Petitioners request the removal of "any unnecessary and
17 non-excessive bridged tap (bridged tap between 0 and 2,500 feet that serves no network
18 design purpose)". See Fogle at 9:2-4. As we explained in our direct testimony, these
19 terms are unacceptable. They leave the determination of what "serves no network design
20 purpose" entirely to BellSouth's discretion. BellSouth would decide whether Joint
21 Petitioners' customers can receive quality DSL or other advanced services that require

1 clean copper. In addition, the rates contained in BellSouth's Special Construction tariff,
2 those that Joint Petitioners are able to discern, are prohibitively expensive. Application
3 of such rates would in effect preclude us from obtaining a loop with less than 2,500 feet
4 of bridged tap, thus leading to the impairment of DSL or other advanced services that we
5 could provide (as BellSouth recognizes and seeks to ensure is the case). *See Fogle at*
6 *4:11-13. [Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

7 **Q. DO YOU AGREE WITH MR. FOGLE'S ASSERTION THAT "LINE**
8 **CONDITIONING BEYOND WHAT BELL SOUTH PERFORMS FOR ITS OWN**
9 **CUSTOMERS (WHICH IS BELL SOUTH'S ONLY OBLIGATION) OR IS**
10 **WILLING TO VOLUNTARILY PROVIDE" TO CLECS IS NOT**
11 **APPROPRIATELY PART OF THIS ARBITRATION, BUT SHOULD INSTEAD**
12 **BE THE SUBJECT OF A SEPARATE AGREEMENT? [FOGLE AT 9:8-12]**

13 **A.** No. Repetition of a false position does not make it right. BellSouth's line conditioning
14 obligation is not limited to what BellSouth decides it will routinely do for its own
15 customers. Under Mr. Fogle's theory, BellSouth would be free to eliminate any line
16 conditioning obligations, and based on his testimony, it appears that BellSouth thinks that
17 it has (there is very little line conditioning that BellSouth will do on behalf of its own
18 customers). We see nothing in Mr. Fogle's testimony or in the FCC's rule or orders that
19 supports BellSouth's position that it unilaterally can determine the scope of its line
20 conditioning obligations. Moreover, since line conditioning is part of the FCC's rules
21 implementing section 251, it is plain to see that Mr. Fogle's claim that certain types of
22 line conditioning are outside the scope of this arbitration is without merit. Joint
23 Petitioners do not embrace BellSouth's attempt to undermine and avoid its agreement

1 filing obligations under section 252. *[Sponsored by: M. Johnson (KMC), J. Willis*
2 *(NVX/NSC), J. Falvey (XSP)]*

3 **Q. BELLSOUTH CLAIMS THAT BRIDGED TAP THAT IS LESS THAN 2,500**
4 **FEET DOES NOT IMPAIR THE PROVISION OF HIGH SPEED DATA**
5 **TRANSMISSION. [FOGLE AT 9:14-10:3] PLEASE RESPOND.**

6 **A.** BellSouth makes this assertion without any justification or support. Indeed, Mr. Fogle
7 said previously that bridged taps may diminish the capacity of the loop or subloop to
8 transmit high-speed telecommunications. *See Fogle at 3:24-4:3.* Nevertheless, BellSouth
9 is entitled to its opinions (regardless of whether they conflict). Those opinions, however,
10 do not change BellSouth's obligations. Joint Petitioners should not be caged by what
11 aspects of line conditioning BellSouth thinks is or is not necessary – or by what
12 BellSouth is reluctantly willing to offer its own retail customers. And, just because
13 BellSouth's policy was established by the Shared Loop Collaborative and BellSouth
14 claims it is consistent with "industry standards for xDSL services," *see Fogle at 9:14-*
15 *10:3,* does not mean that it does not harm the Petitioners. The Petitioners are attempting
16 to create new innovative services to compete with BellSouth's dominating market share.
17 The services we are seeking to preserve the ability to develop are not Shared Loop
18 services. For example, as discussed in our direct testimony, some of the Petitioners are
19 exploring technologies that may need bridged taps longer than 2,500 feet such as
20 "Etherloop" and "G.SHDSL Long" technologies. *See Joint Petitioners at 62. [Sponsored*
21 *by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

1 **Q. DID ANYTHING MR. FOGLE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU**
2 **TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

3 **A.** No. Items 36, 37 and 38 (Issues 2-18, 2-19 and 2-2) essentially turn on one question: do
4 Joint Petitioners' have the right to insist upon full and unqualified compliance with the
5 FCC's line conditioning rule or is BellSouth permitted to re-write the rule and impose its
6 reduced obligation re-write on Joint Petitioners. To us, the answer is obvious: Joint
7 Petitioners need not accept less than full compliance with the FCC's line conditioning
8 rule. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

9 **Q. MS. BLAKE STATES THAT THIS ISSUE SHOULD BE MOVED TO THE**
10 **GENERIC PROCEEDING FOR CONSIDERATION AND RESOLUTION.**
11 **[BLAKE AT 7:1-5]. DO YOU AGREE?**

12 **A.** Absolutely not. This issue has been part of the arbitration since day one and, per section
13 252, Joint Petitioners have a right to have this issue decided in this arbitration. The fact
14 that this issues is, as BellSouth says, "likely" to be addressed in the generic proceeding is
15 insufficient cause for removal. Moreover, Ms. Blake's assertion seems wrong as there is
16 not a single line conditioning issue that has been identified on the regional issues list
17 being developed for the generic proceeding. Notably, the Florida Commission already
18 has rejected the same request made by BellSouth there and we believe that Tennessee,
19 Kentucky and others will follow suit. Unless the Joint Petitioners voluntarily agree to
20 have an issue moved outside the arbitration, we do not believe that an issue can be
21 removed at the request of the respondent, BellSouth. If BellSouth wishes to pursue its
22 request, it should file a proper motion and the Joint Petitioners should be afforded ample
23 opportunity to file an opposition (as they were afforded in Florida, Tennessee and

Kentucky). [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey
(XSP)]

Item No. 39, Issue No. 2-21 [Section 2.12.6]: This issue, including both subparts, has been resolved.

Item No. 40, Issue No. 2-22 [Section 2.14.3.1.1]: This issue has been resolved.

Item No. 41, Issue No. 2-23 [Sections 2.16.2.2, 2.16.2.3.1-5, 2.16.2.3.7-12]: This issue has been resolved.

Item No. 42, Issue No. 2-24 [Section 2.17.3.5]: This issue has been resolved.

Item No. 43, Issue No. 2-25 [Section 2.18.1.4]: This issue has been resolved.

Item No. 44, Issue No. 2-26 [Section 3.6.5]: This issue has been resolved.

Item No. 45, Issue No. 2-27 [Section 3.10.3]: This issue has been resolved.

Item No. 46, Issue No. 2-28 [Section 3.10.4]: This issue has been resolved.

Item No. 47, Issue No. 2-29 [Section 4.2.2]: This issue has been resolved as to both subparts.

Item No. 48, Issue No. 2-30 [Section 4.5.5]: This issue has been resolved.

Item No. 49, Issue No. 2-31 [Section 5.2.4]: This issue has been resolved.

Item No. 50, Issue No. 2-32 [Sections 5.2.5.2.1, 5.2.5.2.3, 5.2.5.2.4, 5.2.5.2.5, 5.2.5.2.7]: This issue has been resolved.

Item No. 51, Issue No. 2-33 [Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3]: (A) *This issue has been resolved.*

(B) *Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?*

(C) *Who should conduct the audit and how should the audit be performed?*

1
2 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 51(B)/ISSUE 2-**
3 **33(B).**

4 **A.** It is the CLECs' position that to invoke its limited right to audit CLEC's records in order
5 to verify compliance with the high capacity EEL service eligibility criteria, BellSouth
6 should send a Notice of Audit to the CLECs, identifying the particular circuits for which
7 BellSouth alleges non-compliance and demonstrating the cause upon which BellSouth
8 rests its allegations. The Notice of Audit should also include all supporting
9 documentation upon which BellSouth establishes the cause that forms the basis of
10 BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to
11 the CLECs with all supporting documentation no less than thirty (30) days prior to the
12 date upon which BellSouth seeks to commence an audit. *[Sponsored by: M. Johnson*
13 *(KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

14 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU**
15 **TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

16 **A.** No. This issue, in addition to encompassing what must be included with an EEL audit
17 notice, also encompasses a dispute over the scope of any audit. BellSouth's proposed
18 language is vague and only states that it will identify the cause for the audit. This is
19 because BellSouth believes that it is entitled to audit all of a Joint Petitioners' EELs upon

1 request. Obviously, this position is an affront to the “limited right to audit” the FCC
2 made provision for and renders meaningless the “for cause” auditing standard adopted by
3 the FCC and agreed to by the parties. Alternatively, the Joint Petitioners’ proposed
4 language is precise and states that BellSouth will identify the particular circuits for which
5 BellSouth alleges non-compliance with the FCC-mandated service eligibility criteria and
6 provide documentation to justify its allegations of cause. Although BellSouth asserts that
7 neither notice nor documentation are expressly required by the TRO, the TRO does
8 require that audits be limited and that they only be conducted under a “for cause”
9 auditing standard. Moreover, the FCC has recognized that the TRO only “basic
10 principles for EEL audits” which the states can and should fill-out. *[Sponsored by: M.*
11 *Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

12 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 51(C)/ISSUE 2-**
13 **33(C).**

14 **A.** The audit should be conducted by a third party independent auditor mutually agreed upon
15 by the Parties. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey*
16 *(XSP)]*

17 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU**
18 **TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

19 **A.** No. The Joint Petitioners maintain, as reflected in their proposed language, that to ensure
20 impartiality, the Parties must agree on the third-party auditor. While BellSouth’s position
21 is that mutual agreement would only serve to delay the audit, the Joint Petitioners submit
22 that mutual agreement is essential to avoiding undue delay and protracted disputes over

1 the independence of a proposed auditor in any given context.¹⁰ Moreover, the fact that
2 any auditor may pledge generally to remain AICPA-compliant does not solve individual
3 issues or conflicts that may arise in a particular situation. The *Triennial Review Order*,
4 through its incorporation of AICPA standards, requires that an auditor be independent in
5 both appearance and fact. Thus, issues regarding the independence of an auditor must be
6 resolved as they arise. (This also would be consistent with the Dispute Resolution
7 process that will be incorporated into the Agreement's General Terms and Conditions, as
8 neither side has championed a proposal that would not permit disputes to be addressed as
9 they arise and are submitted to dispute resolution by the offended party. Federal law
10 requires independence and it does not require a party to succumb to an unlawful audit
11 which it may only complain about later. Accordingly, the Commission should adopt the
12 language proposed by the Joint Petitioners to ensure that BellSouth does not have the
13 ability to impose on Joint Petitioners an auditor that is not independent in appearance or
14 fact. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

¹⁰ Although one might think of Deloitte and KPMG as independent auditors, the fact is that they cannot serve as independent auditors in all instances. Each of these firms has cited conflicts in rejecting a request of one of the Joint Petitioners to serve as an auditor. There also may be particular facts that bar (or should bar) an auditor from serving as an independent auditor. Those facts may not be previously known and may only become apparent during the course of an audit. Indeed, with respect to NuVox in particular, it does not appear that KPMG is qualified to serve as an independent auditor, as the two entities are involved in litigation regarding KPMG's breach of a nondisclosure agreement pertaining to an ongoing EEL audit.

1 **Q. MS. BLAKE STATES THAT THIS ISSUE (INCLUSIVE OF BOTH SUB-PARTS)**
2 **SHOULD BE MOVED TO THE GENERIC PROCEEDING FOR**
3 **CONSIDERATION AND RESOLUTION. [BLAKE AT 32:25-27; 7:1-4]. DO YOU**
4 **AGREE?**

5 **A.** Absolutely not. This issue has been part of the arbitration since day one and, per section
6 252, Joint Petitioners have a right to have this issue decided in this arbitration. The fact
7 that this issues is, as BellSouth says, “likely” to be addressed in the generic proceeding is
8 insufficient cause for removal. Notably, the Florida Commission already has rejected the
9 same request made by BellSouth there and we believe that Tennessee, Kentucky and
10 others will follow suit. Unless the Joint Petitioners voluntarily agree to have an issue
11 moved outside the arbitration, we do not believe that an issue can be removed at the
12 request of the respondent, BellSouth. If BellSouth wishes to pursue its request, it should
13 file a proper motion and the Joint Petitioners should be afforded ample opportunity to file
14 an opposition (as they were afforded in Florida, Tennessee and Kentucky). *[Sponsored*
15 *by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

16 *Item No. 52, Issue No. 2-34 [Section 5.2.6.2.3]: **This issue***
 has been resolved.

17 *Item No. 53, Issue No. 2-35 [Section 6.1.1]: **This issue has***
 been resolved.

18 *Item No. 54, Issue No. 2-36 [Section 6.1.1.1]: **This issue***
 has been resolved.

19 *Item No. 55, Issue No. 2-37 [Section 6.4.2]: **This issue has***
 been resolved.

20 *Item No. 56, Issue No. 2-38 [Sections 7.2, 7.3]: **This issue***
 has been resolved.

Item No. 57, Issue No. 2-39 [Sections 7.4]: ***This issue has been resolved.***

Item No. 58, Issue No. 2-40 [Sections 9.3.5]: ***This issue has been resolved.***

Item No. 59, Issue No. 2-41 [Sections 14.1]: ***This issue has been resolved.***

INTERCONNECTION (ATTACHMENT 3)

Item No. 60, Issue No. 3-1 [Section 3.3.4 (KMC, NSC, NVX/NSC), 3.3.3 XSP]: ***This issue has been resolved.***

Item No. 61, Issue No. 3-2 [Section 9.6 and 9.7]: ***This issue has been resolved.***

Item No. 62, Issue No. 3-3 [Section 10.7.4, 10.9.5, and 10.12.4]: ***This issue has been resolved.***

Item No. 63, Issue No. 3-4 [Section 10.8.6, 10.10.6 and 10.13.5]: ***This issue has been resolved.***

Item No. 64, Issue No. 3-5 [Section 10.5.5.2, 10.5.6.2 and 10.7.4.2]: ***This issue has been resolved.***

Item No. 65, Issue No. 3-6 [Section 10.8.1, 10.10. 1]: Should BellSouth be allowed to charge the CLEC a Transit Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 65/ISSUE 3-6.

A. BellSouth should not be permitted to impose upon CLECs a Transit Intermediary Charge (“TIC”) for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC based additive charge which exploits BellSouth’s market power and is discriminatory. [Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]

1 **Q. PLEASE EXPLAIN WHY PETITIONERS' LANGUAGE IS APPROPRIATE**
2 **WITH REGARD TO THE TIC CHARGE?**

3 **A.** The Petitioners' language – which excludes the TIC – is appropriate for the obvious
4 reason that any charges for BellSouth's transiting services should be at TELRIC-based
5 rates. Moreover, the Commission has never established a TELRIC-based rate for the TIC
6 charge and BellSouth already collects elemental rates for switching and common
7 transport to recover its costs associated with providing the transiting functionality.
8 *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

9 **Q. IS BELL SOUTH CORRECT IN ITS ASSERTION THAT IT IS NOT REQUIRED**
10 **TO PROVIDE A TRANSIT TRAFFIC FUNCTION BECAUSE IT IS NOT A**
11 **SECTION 251 OBLIGATION UNDER THE ACT? [BLAKE AT 34:20-22]**

12 **A.** No, BellSouth is not correct. As explained in our direct testimony, transiting is an
13 interconnection obligation firmly ensconced in section 251 of the Act. Moreover, this
14 transiting functionality has been included in BellSouth interconnection agreements for
15 nearly 8 years. BellSouth already has agreed to continue providing transit services to
16 Joint Petitioners under the Agreement – thus, once again, this issue is not about whether
17 BellSouth will provide transit services to Joint Petitioners.

18 In any event, we believe that BellSouth's transiting service is certainly an obligation
19 under section 251 of the Act and subject to the TELRIC pricing requirements that
20 accompany those obligations. We are aware of no FCC or Commission order that finds
21 that transiting is not a section 251 obligation. Notably, transiting functionality is
22 something BellSouth regularly offers in Attachment 3 of its interconnection agreements,

1 which sets forth the terms and conditions of BellSouth's obligations to interconnect with
2 CLECs pursuant to section 251(c) of Act.

3 It also is worth noting that this issue has been addressed by the North Carolina
4 Commission in response to a Verizon Petition for Declaratory Ruling that Verizon is not
5 required to provide InterLATA EAS traffic transit between third party carriers (Docket
6 No. P-19, Sub 454). BellSouth filed a brief in support of Verizon's position. In
7 consideration of Verizon's Petition, the North Carolina Commission concluded that
8 Verizon is "obligated to provide the transit service as a matter of law." The Commission
9 agreed with the arguments set forth by the proponents of the transiting obligation,
10 specifically that the transiting function follows directly from an ILEC's obligation to
11 interconnect under 47 U.S.C. §§251(a)(1), 252(c)(2). *[Sponsored by: M. Johnson*
12 *(KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

13 **Q. BELLSOUTH CLAIMS THAT IN PROVIDING THE TRANSIT TRAFFIC**
14 **FUNCTION, IT INCURS COSTS BEYOND THOSE THAT THE TELRIC-RATES**
15 **RECOVERS, SUCH AS COST OF SENDING RECORDS TO CLECS**
16 **IDENTIFYING THE ORIGINATING CARRIER. PLEASE RESPOND. [BLAKE**
17 **AT 35:15-22]**

18 **A.** BellSouth has provided this function as part of its interconnection agreements for nearly
19 8 years and has not claimed to us, prior to this negotiation/arbitration, that the elemental
20 rates for tandem switching and common transport do not adequately provide for
21 BellSouth's cost recovery. As is typically the case with new interconnection costs, if
22 BellSouth now believes the current rates no longer provide for adequate cost recovery,
23 BellSouth should conduct a TELRIC cost study and propose a rate in the Commission's

1 next generic pricing proceeding. BellSouth, however, should not be permitted
2 unilaterally to impose a new charge without submitting such charge to the Commission
3 for review and approval. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J.*
4 *Falvey (XSP)]*

5 **Q. BELLSOUTH ARGUES THAT CLECS HAVE THE OPTION TO CONNECT**
6 **DIRECTLY WITH OTHER CARRIERS AND DO NOT NEED TO USE**
7 **BELLSOUTH TO PROVIDE A TRANSIT FUNCTION. PLEASE RESPOND.**
8 **[BLAKE AT 35:6-8]**

9 **A.** While Joint Petitioners could theoretically directly interconnect with every carrier in the
10 state, it is not practical to expect them to do so. The more practical alternative is for Joint
11 Petitioners to use BellSouth's transiting function as they have always done. As BellSouth
12 itself states, CLECs use BellSouth transiting because it is more economical and efficient
13 than direct trunking. *See Blake at 35:8-10.* Different CLECs have different network
14 configurations and needs, and, therefore may choose to connect directly with other
15 carriers or utilize BellSouth's transiting function. Regardless of a CLEC's choice,
16 BellSouth should make its transiting function available to all CLECs on a non-
17 discriminatory basis at TELRIC-based rates. *[Sponsored by: M. Johnson (KMC), J.*
18 *Willis (NVX/NSC), J. Falvey (XSP)]*

19 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
20 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

21 **A.** No. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

<i>Item No. 66, Issue No. 3-7 [Section 10.1]: This issue has been resolved.</i>

1 **Item No. 67, Issue No. 3-8 [Section 10.2, 10.2.1, 10.3]: This**
2 **issue has been resolved.**

3 **Item No. 68, Issue No. 3-9 [Section 2.1.12]: This issue has**
4 **been resolved.**

5 **Item No. 69, Issue No. 3-10 [Section 3.2, Ex. A]: This issue,**
6 **in both subparts, has been resolved.**

7 **Item No. 70, Issue No. 3-11 [Sections 3.3.1, 3.3.2, 3.4.5,**
8 **10.10.2]: This issue has been resolved.**

9 **Item No. 71, Issue No. 3-12 [Section 4.5]: This issue has**
10 **been resolved.**

11 **Item No. 72, Issue No. 3-13 [Section 4.6]: This issue has**
12 **been resolved.**

13 **Item No. 73, Issue No. 3-14 [Sections 10.10.4, 10.10.5,**
14 **10.10.6, 10.10.7]: This issue has been resolved.**

COLLOCATION (ATTACHMENT 4)

Item No. 74, Issue No. 4-1 [Section 3.9]: This issue has
been resolved.

Item No. 75, Issue No. 4-2 [Sections 5.21.1, 5.21.2]: This
issue has been resolved.

Item No. 76, Issue No. 4-3 [Section 8.1]: This issue has
been resolved.

Item No. 77, Issue No. 4-4 [Section 8.4]: This issue has
been resolved.

Item No. 78, Issue No. 4-5 [Section 8.6]: This issue has
been resolved.

Item No. 79, Issue No. 4-6 [Sections 8.11, 8.11.1, 8.12.2]:
This issue has been resolved.

Item No. 80, Issue No. 4-7 [Section 9.1.1]: This issue has
been resolved.

1 *Item No. 81, Issue No. 4-8 [Sections 9.1.2, 9.1.3]: This issue*
2 *has been resolved.*

3 *Item No. 82, Issue No. 4-9 [Sections 9.3]: This issue has*
4 *been resolved.*

5 *Item No. 83, Issue No. 4-10 [Sections 13.6]: This issue has*
6 *been resolved.*

7 **ORDERING (ATTACHMENT 6)**

8 *Item No. 84, Issue No. 6-1 [Section 2.5.1]: This issue has*
9 *been resolved.*

10 *Item No. 85, Issue No. 6-2 [Section 2.5.5]: This issue has*
11 *been resolved.*

12 *Item No. 86, Issue No. 6-3 [Sections 2.5.6.2, 2.5.6.3] (A)*
13 *This issue has been resolved. (B) How should disputes over*
14 *alleged unauthorized access to CSR information be handled*
15 *under the Agreement?*

16 **Q. WHAT IS YOUR POSITION WITH RESPECT TO ITEM 86(B)/ISSUE 6-3(B)?**

17 **A.** If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it

effectively denies one Party the due process contemplated by Dispute Resolution provisions incorporated in the General Terms and Conditions of the Agreement.

[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

Q. DID ANYTHING MR. FERGUSON HAD TO SAY ON THIS ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

A. No. In particular, Mr. Ferguson cannot through testimony cure deficiencies in BellSouth's proposed language (the fact that BellSouth fails to clarify its language is disturbing). However, Joint Petitioners believe that the differences between the parties have narrowed significantly, and we are hopeful that a negotiated resolution of this issue can be reached in the near future.¹¹ Joint Petitioners remain concerned that the timeframes associated with the remedies set forth in BellSouth's proposal are unreasonably short and that it remains unclear as to whether and in what instances BellSouth would seek to engage in "self help" in the form of suspension of access to ordering systems and discontinuance of service. As stated previously, BellSouth's insistence on having the ability to unilaterally resolve disputes by engaging in self-help is inappropriate and coercive. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

*Item No. 87, Issue No. 6-4 [Section 2.6]: **This issue has been resolved.***

¹¹ Joint Petitioners are awaiting a response from BellSouth on an offer to settle this issue.

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Item No. 88, Issue No. 6-5 [Section 2.6.5]: What rate should apply for Service Date Advancement (a/k/a service expedites)?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 88/ISSUE 6-5.

A. Rates for Service Date Advancement (a/k/a service expedites) related to UNEs, interconnection or collocation should be set consistent with TELRIC pricing principles.

[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]

Q. PLEASE EXPLAIN WHY SERVICE DATE ADVANCEMENTS SHOULD BE PRICED AT TELRIC-COMPLIANT RATES.

A. Unbundled Network Elements must be provisioned at TELRIC-compliant rates. BellSouth does not dispute this fact. *See Blake at 38:9-11.* An expedite order for a UNE should not be treated any differently. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. PLEASE ADDRESS BELL SOUTH'S ASSERTION THAT BECAUSE OFFERING EXPEDITES IS NOT A 251 OBLIGATION, TELRIC RATES SHOULD NOT APPLY. [BLAKE AT 38:16-17]

A. First, it is important to make clear that this issue is not about whether BellSouth will offer expedites in this Agreement. It already has agreed to do so. There is no dispute over the language – it is merely a dispute over the appropriate rate. Second, TELRIC-based rates, by definition, include a reasonable profit. As explained in our direct testimony, the rates proposed by BellSouth are unreasonable, excessive and harmful to competition and consumers. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

1 **Q. WHY IS THIS ISSUE APPROPRIATE FOR A SECTION 251 ARBITRATION?**

2 **A.** As explained in our direct testimony, the manner in which BellSouth provisions UNEs is
3 absolutely within the parameters of section 251. Moreover, the Parties already have
4 negotiated and agreed to language providing for expedites. BellSouth cannot now argue
5 that rates for that service cannot be arbitrated. *[Sponsored by: M. Johnson (KMC), J.*
6 *Willis (NVX/NSC), J. Falvey (XSP)]*

7 **Q. BELLSOUTH STATES THAT “ANY REQUIREMENT THAT FORCES**
8 **BELLSOUTH TO PRICE VOLUNTARILY-OFFERED SERVICES AT TELRIC**
9 **PRICES WILL CHILL BELLSOUTH’S WILLINGNESS TO VOLUNTARILY**
10 **OFFER SUCH SERVICES TO CLECS.” [BLAKE AT 39:2-5]. PLEASE**
11 **RESPOND.**

12 **A.** BellSouth must provide services to CLECs at parity with how BellSouth treats its own
13 retail operation. Therefore, if BellSouth chooses to no longer voluntarily offer expedites
14 to CLECs, then BellSouth can no longer provide expedites for its own retail operation.
15 Because BellSouth does indeed provide expedites to its retail operation it has a section
16 251 obligation to provide the same access to us – at TELRIC-compliant rates. We don’t
17 pay retail for loops and we shouldn’t pay retail for expediting them. The reason why is
18 because section 251 requires that these things be made available at TELRIC compliant
19 rates (which retail customers are not entitled to). We are not BellSouth’s retail customers
20 and this Commission should reject BellSouth’s attempt to replace its statutory obligations
21 (and kill competition) with tariffed service offerings that retail customers can buy.
22 *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

1 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
2 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

3 **A.** No. However, the Joint Petitioners remain optimistic that BellSouth will take them up on
4 their offer to negotiate a reasonable rate for service expedites. [*Sponsored by: M.*
5 *Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)*]

6 *Item No. 89, Issue No. 6-6 [Section 2.6.25]: This issue has*
been resolved.

7 *Item No. 90, Issue No. 6-7 [Section 2.6.26]: This issue has*
been resolved.

8 *Item No. 91, Issue No. 6-8 [Section 2.7.10.4]: This issue*
has been resolved.

9 *Item No. 92, Issue No. 6-9 [Section 2.9.1]: This issue has*
been resolved.

10 *Item No. 93, Issue No. 6-10 [Section 3.1.1]: This issue has*
been resolved.

11 *Item No. 94, Issue No. 6-11 [Sections 3.1.2, 3.1.2.1]: This*
issue has been resolved.

12 **BILLING (ATTACHMENT 7)**

13 *Item No. 95, Issue No. 7-1 [Section 1.1.3]: This issue has*
been resolved.

14 *Item No. 96, Issue No. 7-2 [Section 1.2.2]: This issue has*
been resolved.

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3 **Item No. 97, Issue No. 7-3 [Section 1.4]: When should**
4 **payment of charges for service be due?**

5
6 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 97/ISSUE 7-3.**

7 **A.** Payment of charges for services rendered should be due thirty (30) calendar days from
8 receipt or website posting of a complete and fully readable bill or within thirty (30)
9 calendar days from receipt or website posting of a corrected or retransmitted bill, in those
10 cases where correction or retransmission is necessary for processing. *[Sponsored by: M.*
11 *Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

12 **Q. PLEASE EXPLAIN WHY PETITIONERS' LANGUAGE WITH REGARD TO**
13 **PAYMENT DUE DATE IS APPROPRIATE?**

14 **A.** Joint Petitioners' language is appropriate given that the Petitioners agreed to BellSouth's
15 proposal for a 30-day payment deadline (one billing cycle). We had initially sought 45
16 days. Under this tight deadline it is imperative that CLECs be given the full 30 days to
17 review and pay those bills. As Joint Petitioners demonstrated in their direct testimony,
18 Petitioners typically have far less than 30 days to pay invoices due to a long lag time that
19 is experienced between BellSouth's "bill date" and the date on which Joint Petitioners
20 actually receive bills. Accordingly, the Petitioners' language provides that the Petitioners
will be given 30-days to pay once a Petitioner receives a complete and fully readable bill
via mail or website posting. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC),*
J. Falvey (XSP)]

1 **Q. PLEASE RESPOND TO BELL SOUTH'S SYSTEMS ARGUMENTS WHY IT**
2 **CANNOT ALLOW THE JOINT PETITIONERS 30 DAYS UPON RECEIPT TO**
3 **PAY A BILL. [BLAKE AT 39:17-23]**

4 **A.** The Joint Petitioners should not be subject to unfair payment terms based on BellSouth's
5 alleged systems limitations. Joint Petitioners should not have to endure inconsistent and
6 unfair payment terms because BellSouth might have to modify its systems to allow
7 CLECs adequate time to pay invoices. It is unreasonable for BellSouth to assert that its
8 systems cannot be modified and improved, or that it won't modify or improve them.

9 As stated in the Joint Petitioners direct testimony, NuVox, on behalf of its NewSouth
10 operating entity, tracked the average time for BellSouth to deliver electronic invoices. It
11 has been NewSouth's experience that once it receives a bill from BellSouth, NewSouth
12 only has between 19-22 days to process the bill for payment. *See* Joint Petitioners at 82.
13 Moreover, it takes on average 6.45 days for Xspedius to receive bills from BellSouth.
14 *See* Joint Petitioners at 82. These timeframes are far from commercially reasonable and
15 BellSouth should not be able to get away with its standard our-current-systems-don't-
16 allow-it-so-it-cannot-be-done argument. Joint Petitioners' request is reasonable and
17 BellSouth should not be able to hide behind its convenient systems limitations arguments
18 to avoid agreement on reasonable and fair payment terms. *[Sponsored by: M. Johnson*
19 *(KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

20 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
21 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

22 **A.** No. The Commission should allow 30 days from posting or receipt of a bill to remit
23 payment. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 98, Issue No. 7-4 [Section 1.6]: ***This issue has been resolved.***

Item No. 99, Issue No. 7-5 [Section 1.7.1]: ***This issue has been resolved.***

Item No. 100, Issue No. 7-6 [Section 1.7.2]: Should CLEC be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 100/ISSUE 7-6.

A. CLECs should not be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination. Rather, if a Petitioner receives a notice of suspension or termination from BellSouth, with a limited time to pay non-disputed past due amounts, Petitioner should be required to pay only those amounts past due as of the date of the notice and as expressly and plainly indicated on the notice, in order to avoid suspension or termination. Otherwise, CLEC will risk suspension or termination due to possible calculation and timing errors. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. PLEASE EXPLAIN WHY PETITIONERS' LANGUAGE IS APPROPRIATE.

A. Joint Petitioners' language is appropriate because there is a substantial risk of calculation errors or disputes and customer impacting service outages inherent in BellSouth's proposal. Payment and dispute posting are all exclusively under BellSouth's control. The Joint Petitioners, however, could do their very best to calculate the precise amount that will become past due as of the pending suspension or termination action, but any such calculation would necessarily have to include a prediction about how timely and

1 accurately BellSouth will post payments and disputes (which can be legitimately
2 withheld). Thus, BellSouth's proposal is tantamount to a shell game that could easily be
3 rigged or abused by BellSouth. Too much is on the line for Joint Petitioners (and our
4 customers) to be subject to such uncertainty. Joint Petitioners – and our customers –
5 could be shut down based on a simple calculation error, a bad prediction about BellSouth
6 posting performance, or by bad actions on the part of BellSouth. Suspension and
7 termination of access to ordering systems and services are very serious events with very
8 significant impacts that stretch well beyond the Parties. When such actions may be taken
9 should not be determined by a shell game exclusively in control of a Party who likely
10 would not mind if it put one or all of the Joint Petitioners out of business. *[Sponsored by:*
11 *M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

12 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
13 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

14 **A.** No. Even BellSouth's revised proposal does not eliminate the guess work involved [see
15 BLAKE at 41:24-43:4], as it calls for a manual help request for additional information on
16 what could be hundreds of bills coming past due (each month, the Joint Petitioners
17 receive thousands of bills from BellSouth – NuVox alone receives over 1100). If
18 BellSouth wants to threaten suspension or termination for non-payment of invoices for
19 services rendered, it must be able to put the precise amount that must be paid on the
20 notice it sends implicating these potentially fatal remedies. Too much is at risk to leave it
21 up to a manual request process with no documentation requirements or response times
22 assured. The cure-amount should be stated in dollars and cents on the face of any
23 suspension or termination notice. This issue is too important to leave to subsequent

1 requests and miscommunications or non-responses that could result therefrom. With
2 remedies as potentially devastating as suspension and termination, margins for error need
3 to be eliminated. BellSouth's proposed acceleration and consolidation of past due
4 amounts across potentially hundreds of bills (regionally, NuVox alone receives over
5 1,100 invoices from BellSouth every month from BellSouth) simply leaves too much
6 room for error and it fails to give proper notice on the accounts (all others) it seeks to
7 consolidate into a single notice. Thus, the revised language proposed by BellSouth still
8 preserves for BellSouth the ability to coerce and game while the holding over the heads
9 of the Joint Petitioners remedies that could destroy their businesses and those of all of the
10 South Carolina customers we serve. Because our businesses and the businesses of the
11 customers we serve are on the line the Commission should have zero tolerance for guess
12 work and should instead require that the amount due be set forth on each notice. This
13 process whereby one notice triggers calculations or requests for calculations across
14 hundreds upon hundreds of bills is improper and is simply too risky to be acceptable.
15 There are other ways to ensure payment that do not threaten to have such a destructive
16 impact on the businesses of the Joint Petitioners and the South Carolina businesses they
17 serve.

Item No. 101, Issue No. 7-7 [Section 1.8.3]: How many months of billing should be used to determine the maximum amount of the deposit?

19
20 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 101/ISSUE 7-7.**

21 **A.** The maximum amount of a deposit should not exceed two month's estimated billing for
22 new CLECs or one and one-half month's actual billing for existing CLECs (based on
23 average monthly billings for the most recent six (6) month period). The one and one-half

1 month's actual billing deposit limit for existing CLECs is reasonable given that balances
2 can be predicted with reasonable accuracy and that significant portions of services are
3 billed in advance. Alternatively, Joint Petitioners are willing to accept a one month
4 maximum for services billed in advance and two month maximum for services billed in
5 arrears. BellSouth recently agreed to this alternative set of maximum amounts with
6 ITC^DeltaCom. (The relevant excerpt from the BellSouth/ITC^DeltaCom Agreement is
7 attached to our Direct Testimony as Exhibit C.) *[Sponsored by: M. Johnson (KMC), H.*
8 *Russell (NVX/NSC), J. Falvey (XSP)]*

9 **Q. PLEASE EXPLAIN WHY IS PETITIONERS' LANGUAGE IS APPROPRIATE.**

10 **A.** The Petitioners' language strikes a reasonable balance, whereby BellSouth's risk
11 exposure is covered by a security deposit and existing CLECs such as Petitioners are not
12 required to tie-up substantial capital in deposits. As stated in our initial testimony,
13 Petitioners maintain that deposit terms should reflect that each Petitioner, directly and
14 through its predecessors, has already had a long and substantial business relationship with
15 BellSouth. Notably, our alternative proposal, which is the maximum deposit provision
16 BellSouth has already agreed to regionally with ITC^DeltaCom, also reflects a
17 reasonable compromise, as it reflects that BellSouth bills in advance for UNEs and other
18 non-usage based elements and therefore under its current proposal to Joint Petitioners
19 would be essentially double securing itself with respect to those services. *[Sponsored by:*
20 *M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

1 **Q. BELLSOUTH CLAIMS THAT A MAXIMUM DEPOSIT BASED ON TWO**
2 **MONTHS BILLING IS CONSISTENT WITH STANDARD PRACTICE IN THE**
3 **TELECOMMUNICATIONS INDUSTRY. PLEASE RESPOND. [BLAKE AT**
4 **43:13-14]**

5 **A.** Whether or not a two month maximum is standard BellSouth practice (and it evidently is
6 not in some states and with respect to certain CLECs), we do not agree that it is
7 appropriate or justified. In almost any other contracting scenario where one party is not
8 attempting to leverage their monopoly legacy and overwhelming market dominance, it
9 would not be standard practice for one side (BellSouth) to continually try to extract
10 deposits from the other. Moreover, BellSouth has agreed to lesser maximums with at
11 least one other CLEC (*See ITC^DeltaCom Georgia Interconnection Agreement*).

12 There is no reason why any of the Joint Petitioners should be subject to a higher
13 maximum deposit. [*Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.*
14 *Falvey (XSP)*]

15
16 **Q. BELLSOUTH ASSERTS THAT JOINT PETITIONERS HAVE “ESTABLISHED**
17 **POLICIES” REGARDING DEPOSIT AMOUNTS BECAUSE JOINT**
18 **PETITIONERS’ TARIFFS SPECIFY THAT DEPOSITS MAY BE REQUIRED IN**
19 **AN AMOUNT NOT TO EXCEED TWO MONTHS ESTIMATED BILLING.**
20 **[BLAKE AT 43:18-25]. PLEASE RESPOND.**

21 **A.** It is true that NuVox’s and KMC’s tariffs set forth a two month maximum deposit when a
22 deposit is required. Two month deposit terms usually come with an automatic refund
23 upon 12 months of good payment – BellSouth is not prepared to offer that here.

1 Nevertheless, Joint Petitioners' tariff terms have little to do with the substance of this
2 arbitration proceeding. BellSouth ignores the fact that most –if not all – services
3 provided by Joint Petitioners are done so through custom contracts, a fact that Joint
4 Petitioners have made known throughout the concurrent arbitration proceedings
5 underway in eight other states. Given the commercial nature of the customer contracts
6 and the fact that Joint Petitioners are competing with each other, BellSouth, and hundreds
7 of other CLECs, Joint Petitioners often must reduce or waive deposits in order to win
8 business. The strict terms of Joint Petitioners tariffs are not always found within their
9 custom contracts. Finally, Joint Petitioners are not retail customers. BellSouth's
10 comparison is inapposite. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.*
11 *Falvey (XSP)]*

12 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
13 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

14 **A.** No. BellSouth's two month maximum deposit proposal is unreasonable in this context,
15 blatantly discriminatory and is more than could possibly be justified. *[Sponsored by: M.*
16 *Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

*Item No. 102, Issue No. 7-8 [Section 1.8.3.1]: Should the
amount of the deposit BellSouth requires from CLEC be
reduced by past due amounts owed by BellSouth to CLEC?*

17
18 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 102/ISSUE 7-8.**

19 **A.** The amount of security due from an existing CLEC should be reduced by amounts due to
20 CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request
21 additional security in an amount equal to such reduction once BellSouth demonstrates a
22 good payment history, as defined in the deposit provisions of Attachment 7 of the

1 Agreement. This provision is appropriate given that the Agreement's deposit provisions
2 are not reciprocal and that BellSouth's payment history with CLECs is often poor.

3 *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

4 **Q. PLEASE EXPLAIN WHY THE PETITIONERS' LANGUAGE IS**
5 **APPROPRIATE.**

6 **A.** Joint Petitioners language is appropriate because it is fair and reasonable. Joint
7 Petitioners have had to endure a legacy of untimely payments and large receivables from
8 BellSouth. For example, KMC recently conducted a study wherein it found that
9 BellSouth paid late 91% of the time (a fact that suggests that BellSouth could use more
10 time to pay its bills and that BellSouth should be endorsing the Joint Petitioners' position
11 and language proposal for Issue 97). A copy of KMC's analysis is appended hereto as
12 Exhibit D. Also, by way of example, BellSouth wrongly withheld amounts of
13 approximately \$25 million to e.spire, a company whose assets Xspedius substantially
14 acquired. More recently, BellSouth has had its receivables run into the millions with
15 Xspedius. There are no deposit provisions in this Agreement to protect Joint Petitioners
16 from the credit risks created by BellSouth's chronically poor payment history. Any credit
17 risk exposure that BellSouth seeks to protect itself from Joint Petitioners is certainly
18 offset by amounts that BellSouth does not pay timely to Joint Petitioners. *[Sponsored by:*

19 *M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

1 **Q. DOES MS. BLAKE PROVIDE ANY JUSTIFICATION FOR BELL SOUTH'S**
2 **REFUSAL TO AGREE TO JOINT PETITIONERS' PROPOSAL? [BLAKE AT**
3 **44:8-45:7]**

4 **A.** No. Ms. Blake provides no justification for BellSouth's refusal to offset deposit requests
5 with amounts past due from BellSouth to Joint Petitioners. Instead, Ms. Blake suggests
6 that suspension/termination of service and assessment of late payment charges are
7 sufficient to protect Joint Petitioners' credit risk created by BellSouth's poor payment
8 track record. Ms. Blake does not explain why these same mechanisms are not sufficient
9 to protect BellSouth. If BellSouth was willing to rely exclusively on those mechanisms,
10 we would as well. However, BellSouth insists upon collecting deposits. Accordingly,
11 we have every right to insist that the deposit requirements incorporated into the
12 Agreement reflect the fact that BellSouth's risk exposure is reduced by amounts that it
13 withholds from Joint Petitioners. *[Sponsored by: M. Johnson (KMC), H. Russell*
14 *(NVX/NSC), J. Falvey (XSP)]*

15 **Q. DID ANYTHING MS. BLAKE HAVE TO SAY ON THIS ISSUE CAUSE YOU TO**
16 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

17 **A.** No. However, the Petitioners recognize BellSouth's proposal that it is willing to reduce a
18 deposit amount by amounts BellSouth owes Petitioners pursuant to Attachment 3. *See*
19 *Blake at 44:20-24.* Nevertheless, the Petitioners do not want to limit their right to reduce
20 security deposits to only BellSouth's undisputed past-due payments. There is no rational
21 basis for such a limitation, as BellSouth retains amounts that it disputes and, as such the
22 Joint Petitioners' risk remains the same regardless of whether BellSouth disputes
23 amounts. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 103, Issue No. 7-9 [Section 1.8.6]: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 103/ISSUE 7-9.

A. BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth **only** in cases where: (a) CLEC agrees that such a deposit is required by the Agreement, or (b) the Commission has ordered payment of such deposit. A dispute over a requested deposit should be addressed via the Agreement's Dispute Resolution provisions and not through "self-help". *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. PLEASE EXPLAIN WHY JOINT PETITIONERS' LANGUAGE IS APPROPRIATE.

A. Joint Petitioners' proposal allows BellSouth to terminate service to CLECs for failure to remit a deposit amount that has been agreed to or ordered. It does not, however, allow BellSouth to engage in self-help in those circumstances where the Parties do not agree on the amount of deposit required (if any). In those circumstances, BellSouth's proper line of recourse is to the Dispute Resolution provisions of the Agreement. In short, the Commission should decide and resolve the dispute – not BellSouth. This language is reasonable and more equitable than BellSouth's proposal, which would allow BellSouth to terminate service to CLEC under any circumstance in which CLEC has not remitted a deposit requested by BellSouth within thirty (30) calendar days. Joint Petitioners' proposal prohibits BellSouth from engaging in unacceptable self-help actions where BellSouth seeks to disregard the Dispute Resolution provisions of the Agreement (and

1 likely the deposit criteria) and instead leverage its monopoly legacy by pulling the plug
2 on a Joint Petitioner and all of its customers. *[Sponsored by: M. Johnson (KMC), H.*
3 *Russell (NVX/NSC), J. Falvey (XSP)]*

4 **Q. MR. FERGUSON ASSERTS THAT “THIRTY CALENDAR DAYS IS A**
5 **REASONABLE TIME PERIOD WITHIN WHICH A CLEC SHOULD MEET ITS**
6 **FISCAL RESPONSIBILITIES”. PLEASE RESPOND. [FERGUSON AT 7:7-9]**

7 **A.** Mr. Ferguson’s statement does not address the issue. As stated in the Petitioners’
8 proposal, if a Joint Petitioner has agreed to a BellSouth deposit request or the
9 Commission has ordered posting of a specified deposit, then BellSouth may terminate
10 service if such deposit is not remitted by the CLEC within 30 days. However, should
11 there be a dispute as to BellSouth’s deposit request, then, under no circumstances, should
12 BellSouth be able to “pull-the-plug” if a Joint Petitioner does not cede to BellSouth’s
13 demands (however unreasonable) within 30 days. Once again, BellSouth is trying to use
14 its monopoly legacy to engage in self-help, without regard to the dispute resolution
15 provisions included in this Agreement. “Pull the plug” provisions such as this one
16 proposed by BellSouth are an inappropriate means of dispute resolution that
17 unnecessarily threaten do disproportionate harm to Joint Petitioners and their South
18 Carolina customers. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.*
19 *Falvey (XSP)]*

1 **Q. DID ANYTHING MR. FERGUSON HAD TO SAY ON THIS ISSUE CAUSE YOU**
2 **TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

3 **A.** No. The Commission should reject this and every other Machiavellian self-help/pull-the-
4 plug provision proposed by BellSouth. *[Sponsored by: M. Johnson (KMC), H. Russell*
5 *(NVX/NSC), J. Falvey (XSP)]*

6
7
8 *Item No. 104, Issue No. 7-10 [Section 1.8.7]: What*
recourse should be available to either Party when the
Parties are unable to agree on the need for or amount of a
reasonable deposit?

9 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 104/ISSUE 7-10.**

10 **A.** If the Parties are unable to agree on the need for or amount of a reasonable deposit, either
11 Party should be able to file a petition for resolution of the dispute and both parties should
12 cooperatively seek expedited resolution of such dispute. *[Sponsored by: M. Johnson*
(KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

13 **Q. PLEASE EXPLAIN WHY PETITIONERS' LANGUAGE IS APPROPRIATE?**

14 **A.** The Petitioners' language is appropriate as it reasonably defers to the dispute resolution
15 provisions of the Agreement. If BellSouth is aggrieved by a Joint Petitioner's response to
16 a deposit request it should file a complaint with the Commission for dispute resolution.
17 BellSouth's proposal, on the other hand, seeks to force the Petitioners to file a complaint
18 – even though we have no right to seek a deposit, and would not be the aggrieved party if
19 a dispute arose with respect to a deposit request. (The complaint filing burden would
20 shift to us, if a dispute arose as to whether we were entitled to the return of various
21 deposit amounts – our position is not one-sided.) Compounding that over-reaching,

1 BellSouth then insists that a Petitioner post a bond while the dispute is pending, and to
2 post a payment bond, which is essentially the same as paying BellSouth the deposit
3 outright. Reasonable and fair dispute resolution provisions do not enable one side to
4 pronounce itself the winner at the outset. Moreover, the dispute resolution provisions
5 agreed to by the parties (notwithstanding their dispute over the availability of courts as a
6 venue) simply do not contemplate bond posting requirements. *[Sponsored by: M.*
7 *Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

8 **Q. HAS MS. BLAKE PROVIDED ANY JUSTIFICATION FOR BELL SOUTH'S**
9 **POSITION?**

10 **A.** No. Ms. Blake restates BellSouth's position, and essentially complains that in the event
11 of a dispute as to whether BellSouth is entitled to a deposit or a certain level of a deposit
12 under the Agreement, BellSouth should not have to seek and prevail in dispute resolution
13 prior to obtaining the relief it seeks. *See Blake at 45:15-46:7.* This is likely the case
14 because there simply is no justification for the heavy-handed and one-sided provision
15 proposed by BellSouth. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.*
16 *Falvey (XSP)]*

17 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**
18 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

19 **A.** No. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

20 *Item No. 105, Issue No. 7-11 [Section 1.8.9]: **This issue has***
been resolved.

21 *Item No. 106, Issue No. 7-12 [Section 1.9.1]: **This issue has***
been resolved.

1 **BONA FIDE REQUEST/NEW BUSINESS REQUEST (BFR/NBR)**

2 **(ATTACHMENT 11)**

*Item No. 107, Issue No. 11-1 [Sections 1.5, 1.8.1, 1.9, 1.10]:
This issue has been resolved.*

3
4 **SUPPLEMENTAL ISSUES**

5 **(ATTACHMENT 2)**

*Item No. 108, Issue No. S-1: How should the final FCC
unbundling rules be incorporated into the Agreement?*

6
7 Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the
8 Commission refer this issue to the generic change-of-law docket for initial resolution and
9 the reincorporation back into this docket for appropriate incorporation into the arbitrated
10 interconnection agreements. If the Commission declines to grant such motion, or if one
11 is not filed, Joint Petitioners reserve the right to supplement this testimony.

12
13 *Item No. 109, Issue No. S-2: (A) Should any intervening
FCC Order adopted in CC Docket 01-338 or WC Docket 04-
313 be incorporated into the Agreement? (B) Should any
intervening State Commission order relating to unbundling
obligations, if any, be incorporated into the Agreement?*

14 Joint Petitioners and BellSouth agree that issue 109/S-2 is now moot.

15 *Item No 110, Issue No. S-3: If FCC 04-179 is vacated or
otherwise modified by a court of competent jurisdiction, how*

should such order or decision be incorporated into the Agreement?

Joint Petitioners and BellSouth agree that issue 110/S-3 is now moot.

Item No. 111, Issue No. S-4 What post Interim Period¹² transition plan should be incorporated into the Agreement?

Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the Commission refer this issue to the generic change-of-law docket for initial resolution and the reincorporation back into this docket for appropriate incorporation into the arbitrated interconnection agreements. If the Commission declines to grant such motion, or if one is not filed, Joint Petitioners reserve the right to supplement this testimony.

Item No. 112, Issue No. S-5: (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?

Joint Petitioners and BellSouth agree that issue 112/S-5 is now moot.

Item No. 113, Issue No. S-6: (A) Is BellSouth obligated to provide unbundled access to DS1 loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?

¹² INTERIM PERIOD – as set forth in ¶29 of the FCC 04-179, is defined as the period that ends on the earlier of (1) March 12, 2005 or (2) the effective date of the final unbundling rules adopted by the FCC pursuant to the Notice of Proposed Rulemaking described in the FCC 04-179

1 Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the
2 Commission refer this issue to the generic change-of-law docket for initial resolution and
3 the reincorporation back into this docket for appropriate incorporation into the arbitrated
4 interconnection agreements. If the Commission declines to grant such motion, or if one
5 is not filed, Joint Petitioners reserve the right to supplement this testimony.

6
Item No 114, Issue No. S-7: (A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport? (B) If so, under what rates, terms and conditions?

7
8 Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the
9 Commission refer this issue to the generic change-of-law docket for initial resolution and
10 the reincorporation back into this docket for appropriate incorporation into the arbitrated
11 interconnection agreements. If the Commission declines to grant such motion, or if one
12 is not filed, Joint Petitioners reserve the right to supplement this testimony.

13
14 *Item No. 115, Issue No. S-8: This issue has been resolved.*

15 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

16 **A.** Yes, for now, it does. Thank you. *[Sponsored by: M. Johnson (KMC), H. Russell*
17 *(NVX/NSC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

BELLSOUTH
Invoices Payments
02/01/04 - 03/13/05

5/23/2005 3:53 PM

Bill Month	Bill Date	Title	Adjustments	LPCs Billed	Usage	Payment	Payment Date	Bill Due Date	Days Late	Daily Interest Rate	LPC Due
February-04	02/01/04	Bell South	\$0.00	\$1,387.70	\$3,044.06	\$3,044.06	04/08/04	03/01/04	37	0.00059	\$ 66.45
February-04	02/01/04	Bell South	\$0.00	\$12,961.39	\$109,730.23	\$109,730.23	04/08/04	03/01/04	37	0.0005	\$ 2,030.01
February-04	02/01/04	Bell South	\$0.00	\$4,355.47	\$966.52	\$657.97	04/08/04	03/01/04	37	0.0003333	\$ 8.11
February-04	02/01/04	Bell South	\$0.00	\$12,394.99	\$44,705.24	\$44,705.24	04/08/04	03/01/04	37	0.0004536	\$ 750.30
February-04	02/01/04	Bell South	\$0.00	\$24,951.83	\$111,142.83	\$111,142.83	04/08/04	03/01/04	37	0.0004536	\$ 1,865.33
February-04	02/01/04	Bell South	\$0.00	\$32,459.08	\$77,207.82	\$77,207.82	04/08/04	03/01/04	37	0.0004536	\$ 1,295.79
February-04	02/01/04	Bell South	\$0.00	\$12,671.10	\$35,644.70	\$35,644.70	04/08/04	03/01/04	37	0.0005224	\$ 688.97
February-04	02/01/04	Bell South	\$0.00	\$11,767.41	\$52,584.32	\$52,584.32	04/08/04	03/01/04	37	0.0004536	\$ 882.53
February-04	02/01/04	Bell South	\$0.00	\$25.08	\$161.89	\$161.89	04/08/04	03/09/04	29	0.0003333	\$ 1.56
February-04	02/12/04	Bell South	\$0.00	\$3,742.56	\$36,321.82	\$36,321.82	04/08/04	03/12/04	26	0.00059	\$ 557.18
February-04	02/12/04	Bell South	\$0.00	\$6,893.69	\$30,530.83	\$30,530.83	04/08/04	03/12/04	26	0.0003333	\$ 264.57
February-04	02/12/04	Bell South	\$0.00	\$3,088.25	\$22,393.99	\$22,393.99	04/08/04	03/12/04	26	0.0004536	\$ 264.11
February-04	02/12/04	Bell South	\$0.00	\$1,382.66	\$18,867.91	\$18,867.91	04/08/04	03/12/04	26	0.0004536	\$ 222.52
February-04	02/12/04	Bell South	\$0.00	\$485.18	\$2,268.28	\$2,268.28	04/08/04	03/12/04	26	0.0004536	\$ 26.75
February-04	02/12/04	Bell South	\$0.00	\$618.39	\$27,921.42	\$27,921.42	04/08/04	03/12/04	26	0.0005224	\$ 379.24
February-04	02/12/04	Bell South	\$0.00	\$276.70	\$3,788.89	\$3,788.89	04/08/04	03/12/04	26	0.0005	\$ 49.26
February-04	02/12/04	Bell South	\$0.00	\$2,085.79	\$26,177.46	\$26,177.46	04/08/04	03/12/04	26	0.0004536	\$ 308.73
February-04	02/13/04	Bell South	\$0.00	\$0.00	\$0.32	\$0.32	04/08/04	03/12/04	26	0.0005	\$ 0.00
February-04	02/13/04	Bell South	\$0.00	\$48.80	\$0.50	\$0.50	04/08/04	03/12/04	26	0.0004536	\$ 0.01
February-04	02/13/04	Bell South	\$0.00	\$0.09	\$0.70	\$0.79	04/08/04	03/12/04	26	0.0004536	\$ 0.01
February-04 Total			\$0.00	\$131,596.16	\$603,459.73	\$603,151.27					\$ 9,661.44
March-04	03/01/04	Bell South	(\$321.71)	\$1,365.07	\$3,490.59	\$3,168.88	05/18/04	04/01/04	47	0.00059	\$ 87.87
March-04	03/01/04	Bell South	\$0.00	\$13,816.64	\$113,429.02	\$113,429.02	05/18/04	04/01/04	47	0.0005	\$ 2,665.58
March-04	03/01/04	Bell South	\$0.00	\$4,151.27	\$1,287.81	\$1,287.81	05/18/04	04/01/04	47	0.0003333	\$ 20.17
March-04	03/01/04	Bell South	\$0.00	\$12,350.74	\$43,996.97	\$38,187.95	05/18/04	04/01/04	47	0.0004536	\$ 814.14
March-04	03/01/04	Bell South	\$0.00	\$25,199.59	\$115,517.89	\$103,212.95	05/18/04	04/01/04	47	0.0004536	\$ 2,200.42
March-04	03/01/04	Bell South	\$0.00	\$31,870.41	\$80,823.94	\$45,658.73	05/18/04	04/01/04	47	0.0004536	\$ 973.41
March-04	03/01/04	Bell South	\$0.00	\$12,493.77	\$36,491.76	\$34,115.28	05/18/04	04/01/04	47	0.0005224	\$ 837.63
March-04	03/01/04	Bell South	\$0.00	\$11,890.42	\$55,626.76	\$52,115.33				0.0004536	\$ 1,111.06
March-04	03/09/04	Bell South	\$0.00	\$21.53	\$0.00	\$0.00				0.00059	
March-04	03/09/04	Bell South	\$0.00	\$98.69	\$0.00	\$0.00				0.0005	
March-04	03/09/04	Bell South	\$0.00	\$24.58	\$147.96	\$147.96	05/18/04	04/09/04	39	0.0003333	\$ 1.92
March-04	03/09/04	Bell South	\$0.00	\$19.66	\$0.00	\$0.00				0.0004536	
March-04	03/09/04	Bell South	\$0.00	\$173.58	\$0.00	\$0.00				0.0004536	
March-04	03/09/04	Bell South	\$0.00	\$20.24	\$0.00	\$0.00				0.0004536	
March-04	03/09/04	Bell South	\$0.00	\$1.24	\$0.00	\$0.00				0.0004536	
March-04	03/12/04	Bell South	\$0.00	\$3,688.82	\$35,385.82	\$32,099.68	05/18/04	04/12/04	36	0.00059	\$ 681.30
March-04	03/12/04	Bell South	\$0.00	\$6,688.32	\$26,640.54	\$26,550.49	05/18/04	04/12/04	36	0.0003333	\$ 318.57
March-04	03/12/04	Bell South	\$0.00	\$3,040.91	\$20,150.28	\$17,476.53	05/18/04	04/12/04	36	0.0004536	\$ 285.38
March-04	03/12/04	Bell South	\$0.00	\$1,373.21	\$19,196.94	\$17,130.19	05/18/04	04/12/04	36	0.0004536	\$ 279.73
March-04	03/12/04	Bell South	\$0.00	\$471.43	\$2,357.41	\$1,330.94	05/18/04	04/12/04	36	0.0004536	\$ 21.73
March-04	03/12/04	Bell South	\$0.00	\$681.29	\$26,431.02	\$24,698.35	05/18/04	04/12/04	36	0.0005224	\$ 464.51
March-04	03/12/04	Bell South	\$0.00	\$272.60	\$3,718.65	\$3,718.65	05/18/04	04/12/04	36	0.0005	\$ 66.94
March-04	03/12/04	Bell South	\$0.00	\$2,068.47	\$24,001.96	\$22,475.62	05/18/04	04/12/04	36	0.0004536	\$ 367.02
March-04	03/13/04	Bell South	\$0.00	\$0.05	\$0.31	\$0.31				0.0005	
March-04	03/13/04	Bell South	\$0.00	\$46.40	\$1.02	\$0.88				0.0004536	\$ 0.01
March-04	03/13/04	Bell South	\$0.00	\$0.11	\$1.38	\$0.88				0.0004536	
March-04 Total			(\$321.71)	\$131,829.04	\$608,697.93	\$536,806.24					\$ 11,197.89
April-04	04/01/04	Bell South	\$0.00	\$1,512.45	\$3,089.90	\$2,743.19	05/27/04	04/30/04	27	0.00059	\$ 43.70
April-04	04/01/04	Bell South	\$0.00	\$15,032.28	\$101,007.76	\$97,618.96	05/27/04	04/30/04	27	0.0005	\$ 1,317.86
April-04	04/01/04	Bell South	\$0.00	\$4,500.55	\$1,144.90	\$1,100.97	05/27/04	04/30/04	27	0.0003333	\$ 9.91
April-04	04/01/04	Bell South	\$0.00	\$14,104.40	\$43,087.03	\$38,303.51	05/27/04	04/30/04	27	0.0004536	\$ 469.11
April-04	04/01/04	Bell South	\$0.00	\$29,089.19	\$103,185.94	\$103,185.94	05/27/04	04/30/04	27	0.0004536	\$ 1,263.74
April-04	04/01/04	Bell South	\$0.00	\$35,802.57	\$72,083.74	\$45,756.78	05/27/04	04/30/04	27	0.0004536	\$ 560.39
April-04	04/01/04	Bell South	\$0.00	\$14,118.57	\$32,030.80	\$29,922.26	05/27/04	04/30/04	27	0.0005224	\$ 422.05
April-04	04/01/04	Bell South	\$0.00	\$13,728.04	\$48,742.77	\$48,742.77	05/27/04	04/30/04	27	0.0004536	\$ 596.96
April-04	04/09/04	Bell South	\$0.00	\$23.39	\$0.00	\$0.00				0.00059	
April-04	04/09/04	Bell South	\$0.00	\$107.08	\$0.00	\$0.00				0.0005	
April-04	04/09/04	Bell South	\$0.00	\$26.81	\$146.06	\$146.06	05/27/04	05/10/04	17	0.0003333	\$ 0.83
April-04	04/09/04	Bell South	\$0.00	\$21.32	\$0.00	\$0.00				0.0004536	
April-04	04/09/04	Bell South	\$0.00	\$188.36	\$0.00	\$0.00				0.0004536	
April-04	04/09/04	Bell South	\$0.00	\$21.96	\$0.00	\$0.00				0.0004536	
April-04	04/09/04	Bell South	\$0.00	\$1.34	\$0.00	\$0.00				0.0005	
April-04	04/12/04	Bell South	\$0.00	\$4,081.54	\$33,647.18	\$29,527.16	05/27/04	05/12/04	15	0.00059	\$ 261.32
April-04	04/12/04	Bell South	\$0.00	\$0.00	\$42.72	\$41.24	05/27/04	05/12/04	15	0.0005	\$ 0.31

BELLSOUTH
Invoices Payments
02/01/04 - 03/13/05

Bill Month	Blddate	Title	Adjustments	LPCs Billed	Usage	Payment	Payment Date	Bill Due Date	Days Late	Daily Interest Rate	LPC Due
April-04	04/12/04	Bell South	\$0.00	\$7,293.23	\$24,446.29	\$23,567.47	05/27/04	05/12/04	15	0.00033333	\$ 117.83
April-04	04/12/04	Bell South	\$0.00	\$3,345.49	\$21,006.18	\$18,616.49	05/27/04	05/12/04	15	0.0004536	\$ 126.87
April-04	04/12/04	Bell South	\$0.00	\$1,517.27	\$19,999.50	\$19,999.50	05/27/04	05/12/04	15	0.0004536	\$ 136.08
April-04	04/12/04	Bell South	\$0.00	\$506.41	\$2,126.17	\$1,349.07	05/27/04	05/12/04	15	0.0004536	\$ 9.18
April-04	04/12/04	Bell South	\$0.00	\$807.12	\$26,438.12	\$24,631.19	05/27/04	05/12/04	15	0.0005224	\$ 193.01
April-04	04/12/04	Bell South	\$0.00	\$303.20	\$3,984.47	\$3,984.47	05/27/04	05/12/04	15	0.0005	\$ 29.88
April-04	04/12/04	Bell South	\$0.00	\$2,300.96	\$25,680.63	\$25,680.63	05/27/04	05/12/04	15	0.0004536	\$ 174.73
April-04	04/13/04	Bell South	\$0.00	\$0.06	\$0.31	\$0.37	05/27/04	05/13/04	14	0.0005	\$ 0.00
April-04	04/13/04	Bell South	\$0.00	\$50.31	\$0.62	\$0.59	05/27/04	05/13/04	14	0.0004536	\$ 0.00
April-04	04/13/04	Bell South	\$0.00	\$0.14	\$1.22	\$1.36	05/27/04	05/13/04	14	0.0004536	\$ 0.01
April-04 Total			\$0.00	\$148,484.04	\$561,872.31	\$514,919.98				\$ 5,733.55	
May-04	05/01/04	Bell South	(\$654,923.65)	\$0.00	\$2,993.75	\$2,993.75	06/01/04	05/31/04	1	0.00059	\$ 1.77
May-04	05/01/04	Bell South	(\$601,389.02)	\$0.00	\$109,066.30	\$104,440.74	06/01/04	05/31/04	1	0.0005	\$ 52.22
May-04	05/01/04	Bell South	(\$798,695.77)	\$0.00	\$1,145.30	\$1,145.30	06/01/04	05/31/04	1	0.00033333	\$ 0.38
May-04	05/01/04	Bell South	(\$1,351,947.69)	\$0.00	\$49,238.92	\$40,339.28	06/01/04	05/31/04	1	0.0004536	\$ 18.30
May-04	05/01/04	Bell South	(\$2,390,698.55)	\$0.00	\$106,614.41	\$99,401.95	06/01/04	05/31/04	1	0.0004536	\$ 45.09
May-04	05/01/04	Bell South	(\$2,048,097.73)	\$0.00	\$76,902.53	\$43,427.70	06/01/04	05/31/04	1	0.0004536	\$ 19.70
May-04	05/01/04	Bell South	(\$627,527.06)	\$0.00	\$30,518.93	\$29,495.00	06/01/04	05/31/04	1	0.0005224	\$ 15.41
May-04	05/01/04	Bell South	(\$883,824.35)	\$0.00	\$52,016.76	\$50,258.69	06/01/04	05/31/04	1	0.0004536	\$ 22.80
May-04	05/08/04	Bell South	(\$3,490.90)	\$0.00	\$0.00			06/08/04		0.00059	
May-04	05/08/04	Bell South	(\$30,780.16)	\$0.00	\$0.00			06/08/04		0.00033333	
May-04	05/08/04	Bell South	(\$1,984.70)	\$0.00	\$0.00			06/08/04		0.0004536	
May-04	05/08/04	Bell South	(\$15,128.59)	\$0.00	\$0.00			06/08/04		0.0004536	
May-04	05/08/04	Bell South	(\$2,482.91)	\$0.00	\$0.00			06/08/04		0.0005224	
May-04	05/08/04	Bell South	(\$7,198.87)	\$0.00	\$0.00			06/08/04		0.0004536	
May-04	05/09/04	Bell South	(\$1,376.00)	\$0.00	\$0.00			06/09/04		0.00059	
May-04	05/09/04	Bell South	(\$2,179.49)	\$0.00	\$0.00			06/09/04		0.0005	
May-04	05/09/04	Bell South	(\$667.95)	\$0.00	\$135.45	\$135.45	06/01/04	06/09/04		0.00033333	
May-04	05/09/04	Bell South	(\$793.45)	\$0.00	\$0.00			06/09/04		0.0004536	
May-04	05/09/04	Bell South	(\$6,884.50)	\$0.00	\$0.00			06/09/04		0.0004536	
May-04	05/09/04	Bell South	(\$359.93)	\$0.00	\$0.00			06/09/04		0.0005224	
May-04	05/09/04	Bell South	\$201.54	\$0.00	\$0.00			06/09/04		0.0004536	
May-04	05/09/04	Bell South	(\$88.24)	\$0.00	\$0.00			06/09/04		0.00059	
May-04	05/12/04	Bell South	(\$78,700.91)	\$0.00	\$27,798.20	\$27,798.20	06/01/04	06/11/04		0.00059	
May-04	05/12/04	Bell South	\$0.00	\$0.00	\$40.88	\$40.88	06/01/04	06/11/04		0.0005	
May-04	05/12/04	Bell South	(\$173,932.62)	\$0.00	\$22,446.41	\$21,688.97	06/01/04	06/11/04		0.00033333	
May-04	05/12/04	Bell South	(\$79,847.78)	\$0.00	\$22,444.94	\$18,403.41	06/01/04	06/11/04		0.0004536	
May-04	05/12/04	Bell South	(\$19,440.72)	\$0.00	\$21,973.85	\$20,481.95	06/01/04	06/11/04		0.0004536	
May-04	05/12/04	Bell South	(\$9,319.95)	\$0.00	\$2,474.97	\$1,397.64	06/01/04	06/11/04		0.0004536	
May-04	05/12/04	Bell South	(\$11,570.77)	\$0.00	\$24,208.50	\$23,387.87	06/01/04	06/11/04		0.0005224	
May-04	05/12/04	Bell South	(\$6,300.58)	\$0.00	\$3,537.02	\$3,537.02	06/01/04	06/11/04		0.0005	
May-04	05/12/04	Bell South	(\$41,808.56)	\$0.00	\$28,302.27	\$27,349.68	06/01/04	06/11/04		0.0004536	
May-04	05/13/04	Bell South	\$0.00	\$0.00	\$0.39	\$0.39	06/01/04	06/14/04		0.0005	
May-04	05/13/04	Bell South	\$0.00	\$0.00	\$0.93	\$0.93	06/01/04	06/14/04		0.0004536	
May-04	05/13/04	Bell South	\$0.00	\$0.00	\$1.36	\$1.36	06/01/04	06/14/04		0.0004536	
May-04 Total			(\$9,851,239.86)	\$0.00	\$580,862.07	\$515,726.16					\$ 175.66
June-04	06/01/04	Bell South	\$181,866.69	\$0.00	\$3,022.92	\$3,022.92	7/20/2004	6/30/2004	20	0.00059	\$ 35.67
June-04	06/01/04	Bell South	(\$104,213.88)	\$0.00	\$105,088.60	\$101,562.73	7/20/2004	6/30/2004	20	0.0005	\$ 1,015.63
June-04	06/01/04	Bell South	\$50,018.68	\$0.00	\$1,123.87	\$1,086.17	7/20/2004	6/30/2004	20	0.00033333	\$ 7.24
June-04	06/01/04	Bell South	\$13,060.35	\$0.00	\$49,343.70	\$42,660.38	7/20/2004	6/30/2004	20	0.0004536	\$ 387.01
June-04	06/01/04	Bell South	\$328,513.94	\$0.00	\$99,370.54	\$96,449.64	7/20/2004	6/30/2004	20	0.0004536	\$ 874.99
June-04	06/01/04	Bell South	\$2,738.80	\$0.00	\$30,233.75	\$30,233.75	7/20/2004	6/30/2004	20	0.0004536	\$ 274.28
June-04	06/01/04	Bell South	(\$27,508.12)	\$0.00	\$28,017.23	\$27,077.25	7/20/2004	6/30/2004	20	0.0005224	\$ 282.90
June-04	06/01/04	Bell South	\$74,879.76	\$0.00	\$49,656.14	\$47,990.39	7/20/2004	6/30/2004	20	0.0004536	\$ 435.37
June-04	06/08/04	Bell South	(\$9,123.07)	\$0.00	\$0.00			7/8/2004		0.00033333	
June-04	06/08/04	Bell South	(\$0.33)	\$0.00	\$0.00			7/8/2004		0.0004536	
June-04	06/08/04	Bell South	\$0.30	\$0.00	\$0.00			7/8/2004		0.0004536	
June-04	06/09/04	Bell South	(\$3.93)	\$0.00	\$0.00			7/9/2004		0.00059	
June-04	06/09/04	Bell South	\$4.22	\$0.00	\$135.50	\$130.95	7/20/2004	7/9/2004	11	0.00033333	\$ 0.48
June-04	06/09/04	Bell South	(\$120.08)	\$0.00	\$0.00			7/9/2004		0.0004536	
June-04	06/09/04	Bell South	(\$456.77)	\$0.00	\$0.00			7/9/2004		0.0004536	
June-04	06/09/04	Bell South	\$1,953.60	\$0.00	\$0.00			7/9/2004		0.0005224	
June-04	06/12/04	Bell South	\$1,457.44	\$0.00	\$29,989.48	\$29,989.48	7/20/2004	7/12/2004	8	0.00059	\$ 141.55
June-04	06/12/04	Bell South	\$0.31	\$0.00	\$0.00			7/12/2004		0.0005	
June-04	06/12/04	Bell South	\$680.62	\$0.00	\$22,804.77	\$22,014.46	7/20/2004	7/12/2004	8	0.00033333	\$ 58.70

BELLSOUTH
Invoices Payments
02/01/04 - 03/13/05

Bill Month	Bill Date	Title	Adjustments	LPCs Billed	Usage	Payment	Payment Date	Bill Due Date	Days Late	Daily Interest Rate	LPC Due
June-04	06/12/04	Bell South	\$655.85	\$0.00	\$22,120.37	\$19,130.73	7/20/2004	7/12/2004	8	0.0004536	\$ 69.42
June-04	06/12/04	Bell South	\$888.21	\$0.00	\$20,203.45	\$19,610.94	7/20/2004	7/12/2004	8	0.0004536	\$ 71.16
June-04	06/12/04	Bell South	(\$3,793.79)	\$0.00	\$2,289.80	\$2,289.80	7/20/2004	7/12/2004	8	0.0004536	\$ 8.31
June-04	06/12/04	Bell South	\$1,007.59	\$0.00	\$25,670.13	\$24,809.31	7/20/2004	7/12/2004	8	0.0005224	\$ 103.68
June-04	06/12/04	Bell South	\$151.84	\$0.00	\$3,193.92	\$3,193.92	7/20/2004	7/12/2004	8	0.0005	\$ 12.78
June-04	06/12/04	Bell South	\$826.73	\$0.00	\$31,250.93	\$30,203.01	7/20/2004	7/12/2004	8	0.0004536	\$ 109.60
June-04	06/13/04	Bell South	(\$0.32)	\$0.00	\$0.00					0.0005	
June-04	06/13/04	Bell South	(\$3,388.76)	\$0.00	\$1.06					0.0004536	
June-04	06/13/04	Bell South	(\$6.93)	\$0.00	\$0.00					0.0004536	
June-04 Total			\$510,088.93	\$0.00	\$523,522.16	\$501,455.83					3,888.78
July-04	07/01/04	Bell South	\$165.46	\$0.00	\$0.00			08/02/04		0.00059	
July-04	07/01/04	Bell South	\$0.00	\$0.00	\$3,001.07	\$3,001.07	08/25/04	08/02/04	23	0.0005	\$ 40.72
July-04	07/01/04	Bell South	(\$111,650.31)	\$0.00	\$105,986.93	\$105,986.93	08/25/04	08/02/04	23	0.0003333	\$ 1,218.85
July-04	07/01/04	Bell South	\$0.00	\$0.11	\$961.46	\$961.57	08/25/04	08/02/04	23	0.0004536	\$ 7.37
July-04	07/01/04	Bell South	\$0.00	\$5.63	\$52,215.24	\$43,770.19	08/25/04	08/02/04	23	0.0004536	\$ 456.65
July-04	07/01/04	Bell South	\$56.86	\$56.86	\$98,989.91	\$98,989.91	08/25/04	08/02/04	23	0.0004536	\$ 1,032.40
July-04	07/01/04	Bell South	\$0.00	\$28.71	\$2,560.40	\$2,560.40	08/25/04	08/02/04	23	0.0004536	\$ 26.71
July-04	07/01/04	Bell South	\$0.00	\$3.30	\$28,051.54	\$28,048.02	08/25/04	08/02/04	23	0.0005224	\$ 337.00
July-04	07/01/04	Bell South	(\$5,641.89)	\$0.00	\$0.00					0.0004536	
July-04	07/01/04	Bell South	\$0.00	\$2.70	\$49,728.21	\$49,730.91	08/25/04	08/02/04	23	0.0004536	\$ 518.83
July-04	07/01/04	Bell South	\$0.00	\$0.00	\$215.52	\$215.52	08/25/04	08/09/04	16	0.0003333	\$ 1.15
July-04	07/09/04	Bell South	\$0.00	\$0.00	\$31,387.59	\$31,372.63	08/25/04	08/12/04	13	0.00059	\$ 240.63
July-04	07/12/04	Bell South	\$0.00	\$22.34	\$23,143.50	\$23,124.79	08/25/04	08/12/04	13	0.0003333	\$ 100.20
July-04	07/12/04	Bell South	\$0.00	\$0.54	\$19,489.40	\$16,335.40	08/25/04	08/12/04	13	0.0004536	\$ 96.33
July-04	07/12/04	Bell South	\$0.00	\$2.55	\$17,563.19	\$17,563.19	08/25/04	08/12/04	13	0.0004536	\$ 103.57
July-04	07/12/04	Bell South	\$0.00	\$1.20	\$17,570.93	\$2,302.59	08/25/04	08/12/04	13	0.0004536	\$ 13.58
July-04	07/12/04	Bell South	\$0.00	\$0.83	\$2,303.41	\$26,325.69	08/25/04	08/12/04	13	0.0005224	\$ 178.78
July-04	07/12/04	Bell South	\$0.00	\$2.34	\$3,262.98	\$3,261.80	08/25/04	08/12/04	13	0.0005	\$ 21.20
July-04	07/12/04	Bell South	\$0.00	\$0.09	\$30,428.20	\$30,418.82	08/25/04	08/12/04	13	0.0004536	\$ 179.37
July-04	07/13/04	Bell South	\$0.00	\$0.93	\$0.00					0.0005	
July-04	07/13/04	Bell South	\$0.00	\$0.00	\$0.00	\$0.95	08/25/04	08/13/04	12	0.0004536	\$ 0.01
July-04 Total			(\$7,396.51)	\$128.13	\$495,607.90	\$483,937.69					4,573.35
August-04	08/01/04	Bellsouth	\$0.00	\$0.00	\$2,988.51	\$2,988.51	9/15/2004	9/12/04	14	0.00059	\$ 24.77
August-04	08/01/04	Bellsouth	\$208,511.27	\$0.00	\$82,010.54	\$82,010.54	9/15/2004	9/12/04	14	0.0003333	\$ 574.07
August-04	08/01/04	Bellsouth	\$0.00	\$0.12	\$913.96	\$913.96	9/15/2004	9/12/04	14	0.0004536	\$ 4.26
August-04	08/01/04	Bellsouth	\$0.00	\$5.82	\$37,743.51	\$33,148.20	9/15/2004	9/12/04	14	0.0004536	\$ 210.50
August-04	08/01/04	Bellsouth	(\$244,159.71)	\$0.00	\$88,640.18	\$88,640.18	9/15/2004	9/12/04	14	0.0004536	\$ 562.90
August-04	08/01/04	Bellsouth	(\$84,230.97)	\$0.00	\$2,695.18	\$2,695.18	9/15/2004	9/12/04	14	0.0004536	\$ 17.12
August-04	08/01/04	Bellsouth	\$0.00	\$3.40	\$25,789.76	\$25,803.16	9/15/2004	9/12/04	14	0.0005224	\$ 188.71
August-04	08/01/04	Bellsouth	\$0.00	\$2.80	\$41,918.45	\$41,921.25	9/15/2004	9/12/04	14	0.0004536	\$ 266.22
August-04	08/09/04	Bellsouth	\$0.00	\$0.00	\$237.79	\$237.79	9/15/2004	9/8/2004	7	0.0003333	\$ 0.55
August-04	08/12/04	Bellsouth	\$0.00	\$23.09	\$29,049.61	\$29,072.70	9/15/2004	9/13/2004	2	0.00059	\$ 34.31
August-04	08/12/04	Bellsouth	\$0.00	\$0.56	\$21,551.43	\$21,551.99	9/15/2004	9/13/2004	2	0.0003333	\$ 14.37
August-04	08/12/04	Bellsouth	\$0.00	\$2.64	\$16,058.92	\$14,083.46	9/15/2004	9/13/2004	2	0.0004536	\$ 12.78
August-04	08/12/04	Bellsouth	\$0.00	\$1.23	\$5,585.96	\$5,587.19	9/15/2004	9/13/2004	2	0.0004536	\$ 5.07
August-04	08/12/04	Bellsouth	\$0.00	\$0.85	\$2,543.49	\$2,544.34	9/15/2004	9/13/2004	2	0.0004536	\$ 2.31
August-04	08/12/04	Bellsouth	\$0.00	\$2.43	\$23,238.07	\$23,240.50	9/15/2004	9/13/2004	2	0.0005224	\$ 24.28
August-04	08/12/04	Bellsouth	\$0.00	\$0.09	\$3,395.50	\$3,395.50	9/15/2004	9/13/2004	2	0.0005	\$ 3.40
August-04	08/12/04	Bellsouth	\$0.00	\$0.95	\$12,655.88	\$12,656.84	9/15/2004	9/13/2004	2	0.0004536	\$ 11.48
August-04	08/13/04	Bellsouth	\$0.00	\$0.00	\$0.93					0.0004536	
August-04 Total			(\$99,879.41)	\$43.98	\$397,037.46	\$390,502.21					1,957.10
September-04	09/01/04	Bellsouth	\$0.00	\$0.00	\$3,247.54	\$2,238.72	10/18/2004	10/12/04	17	0.00059	\$ 22.45
September-04	09/01/04	Bellsouth	\$0.00	\$38.24	\$79,699.06	\$79,699.06	10/18/2004	10/12/04	17	0.0003333	\$ 677.44
September-04	09/01/04	Bellsouth	\$0.00	\$0.38	\$1,082.39	\$1,044.98	10/18/2004	10/12/04	17	0.0004536	\$ 5.92
September-04	09/01/04	Bellsouth	\$0.00	\$23.95	\$31,620.26	\$24,547.27	10/18/2004	10/12/04	17	0.0004536	\$ 189.29
September-04	09/01/04	Bellsouth	\$0.00	\$32.47	\$85,123.68	\$74,982.40	10/18/2004	10/12/04	17	0.0004536	\$ 578.20
September-04	09/01/04	Bellsouth	\$0.00	\$0.85	\$2,445.77	\$2,446.62	10/18/2004	10/12/04	17	0.0005224	\$ 18.87
September-04	09/01/04	Bellsouth	\$0.00	\$14.02	\$23,089.33	\$18,035.89	10/18/2004	10/12/04	17	0.0004536	\$ 160.17
September-04	09/01/04	Bellsouth	\$0.00	\$19.10	\$39,826.74	\$39,826.74	10/18/2004	10/12/04	17	0.0004536	\$ 307.11
September-04	09/09/04	Bellsouth	\$0.00	\$0.00	\$6.97	\$6.97	10/18/2004	10/18/2004	10	0.0003333	\$ 0.02
September-04	09/12/04	Bellsouth	\$0.00	\$30.41	\$28,343.81	\$23,911.09	10/18/2004	10/12/2004	6	0.00059	\$ 84.65
September-04	09/12/04	Bellsouth	\$0.00	\$3.62	\$6,776.32	\$6,776.32	10/18/2004	10/12/2004	6	0.0003333	\$ 13.55
September-04	09/12/04	Bellsouth	\$0.00	\$7.02	\$5,133.74	\$5,110.22	10/18/2004	10/12/2004	6	0.0004536	\$ 13.91
September-04	09/12/04	Bellsouth	\$0.00	\$4.37	\$0.00	\$4.37	10/18/2004	10/12/2004	6	0.0004536	\$ 0.01
September-04	09/12/04	Bellsouth	\$0.00	\$1.26	\$0.00	\$1.26	10/18/2004	10/12/2004	6	0.0004536	\$ 0.00

BELLSOUTH
 Invoices Payments
 02/01/04 - 03/13/05

Bill Month	Bill Date	Title	Adjustments	LPCs Billed	Usage	Payment	Payment Date	Bill Due Date	Days Late	Daily Interest Rate	LPC Due
September-04	09/12/04	BellSouth	\$0.00	\$7.87	\$21,206.63	\$21,174.55	10/18/2004	10/12/2004	6	0.0005224	\$66.37
September-04	09/12/04	BellSouth	\$0.00	\$0.78	\$0.00	\$0.78	10/18/2004	10/12/2004	6	0.0005	\$0.00
September-04	09/12/04	BellSouth	\$0.00	\$6.39	\$1,178.95	\$1,178.95	10/18/2004	10/12/2004	6	0.0004536	\$3.21
September-04	09/13/04	BellSouth	\$0.00	\$0.00	\$0.00	\$0.69	10/18/2004	10/13/2004	5	0.0004536	\$0.00
September-04 Total						\$300,986.88					\$2,141.19
October-04	10/01/04	BellSouth	\$0.00	\$190.73	\$328,781.88	\$3,048.79	11/16/2004	11/11/2004	15	0.00059	\$26.98
October-04	10/01/04	BellSouth	\$0.00	\$1.25	\$3,047.54	\$79,553.78	11/16/2004	11/11/2004	15	0.0005	\$596.65
October-04	10/01/04	BellSouth	\$0.00	\$17.48	\$79,553.78	\$1,163.19	11/16/2004	11/11/2004	15	0.0003333	\$5.82
October-04	10/01/04	BellSouth	\$137.93	\$0.24	\$1,162.95	\$26,066.40	11/16/2004	11/11/2004	15	0.0004536	\$177.36
October-04	10/01/04	BellSouth	(\$37.39)	\$17.88	\$26,066.40	\$76,112.94	11/16/2004	11/11/2004	15	0.0004536	\$517.87
October-04	10/01/04	BellSouth	\$12,324.96	\$17.17	\$76,112.94	\$2,547.08	11/16/2004	11/11/2004	15	0.0004536	\$17.33
October-04	10/01/04	BellSouth	\$0.00	\$0.53	\$2,546.55	\$9,012.52	11/16/2004	11/11/2004	15	0.0005224	\$70.82
October-04	10/01/04	BellSouth	\$0.00	\$9.07	\$9,003.45	\$38,746.29	11/16/2004	11/11/2004	15	0.0004536	\$263.63
October-04	10/01/04	BellSouth	\$0.00	\$10.82	\$38,746.29	\$20,741.38	11/16/2004	11/12/2004	4	0.00059	\$48.95
October-04	10/12/04	BellSouth	(\$37.30)	\$3.17	\$20,738.21	\$4.63	11/16/2004	11/12/2004	4	0.0005	\$0.01
October-04	10/12/04	BellSouth	\$0.00	\$0.00	\$0.00	\$2,437.72	11/16/2004	11/12/2004	4	0.0003333	\$3.25
October-04	10/12/04	BellSouth	\$0.00	\$0.79	\$2,436.93	\$10,219.53	11/16/2004	11/12/2004	4	0.0004536	\$18.54
October-04	10/12/04	BellSouth	\$0.00	\$5.03	\$10,214.50	\$1,010.28	11/16/2004	11/12/2004	4	0.0004536	\$1.83
October-04	10/12/04	BellSouth	\$0.00	\$1.28	\$1,009.00	\$0.87	11/16/2004	11/12/2004	4	0.0004536	\$0.00
October-04	10/12/04	BellSouth	\$0.00	\$0.87	\$0.00	\$17,166.24	11/16/2004	11/12/2004	4	0.0005224	\$35.87
October-04	10/12/04	BellSouth	\$0.00	\$2.74	\$17,163.50	\$0.15	11/16/2004	11/12/2004	4	0.0005	\$0.00
October-04	10/12/04	BellSouth	\$0.00	\$0.15	\$0.00	\$5,828.64	11/16/2004	11/12/2004	4	0.0004536	\$10.58
October-04	10/12/04	BellSouth	\$0.00	\$1.12	\$5,827.52	\$0.97	11/16/2004	11/12/2004	4	0.0004536	\$0.00
October-04	10/13/04	BellSouth	\$1.46	\$0.00	\$0.97	\$293,636.16					\$1,795.29
October-04 Total			\$12,389.66	\$89.59	\$293,636.16	\$293,661.40					
Nov-04	11/01/04	BellSouth	\$0.00	\$1.69	\$2,878.45	\$2,878.45	12/20/2004	12/11/2004	19	0.00059	\$32.27
Nov-04	11/01/04	BellSouth	\$2,329.04	\$18.32	\$77,939.78	\$77,939.78	12/20/2004	12/11/2004	19	0.0005	\$739.48
Nov-04	11/01/04	BellSouth	\$0.00	\$0.31	\$1,173.63	\$1,133.10	12/20/2004	12/11/2004	19	0.0003333	\$7.18
Nov-04	11/01/04	BellSouth	\$0.00	\$20.14	\$28,327.65	\$28,327.65	12/20/2004	12/11/2004	19	0.0004536	\$244.14
Nov-04	11/01/04	BellSouth	\$0.00	\$20.34	\$27,349.50	\$77,349.50	12/20/2004	12/11/2004	19	0.0004536	\$666.63
Nov-04	11/01/04	BellSouth	\$0.00	\$0.52	\$2,352.48	\$2,352.48	12/20/2004	12/11/2004	19	0.0004536	\$20.27
Nov-04	11/01/04	BellSouth	\$0.00	\$10.31	\$5,044.13	\$5,044.13	12/20/2004	12/11/2004	19	0.0005224	\$50.07
Nov-04	11/01/04	BellSouth	(\$3,423.82)	\$10.95	\$37,667.09	\$37,667.09	12/20/2004	12/11/2004	19	0.0004536	\$324.63
Nov-04	11/12/04	BellSouth	\$0.00	\$8.98	\$21,018.91	\$21,018.91	12/20/2004	12/13/2004	7	0.00059	\$86.81
Nov-04	11/12/04	BellSouth	(\$1.46)	\$0.00	\$0.00	\$4.91	12/20/2004	12/13/2004	7	0.0005	\$0.02
Nov-04	11/12/04	BellSouth	(\$2,497.66)	\$0.36	\$3,526.93	\$3,526.93	12/20/2004	12/13/2004	7	0.0003333	\$8.23
Nov-04	11/12/04	BellSouth	\$0.00	\$5.11	\$15,414.88	\$15,414.88	12/20/2004	12/13/2004	7	0.0004536	\$48.95
Nov-04	11/12/04	BellSouth	\$0.00	\$1.10	\$1,715.13	\$1,715.13	12/20/2004	12/13/2004	7	0.0004536	\$5.45
Nov-04	11/12/04	BellSouth	\$0.00	\$0.85	\$0.00	\$0.85	12/20/2004	12/13/2004	7	0.0004536	\$0.00
Nov-04	11/12/04	BellSouth	\$0.00	\$3.28	\$14,997.97	\$14,997.97	12/20/2004	12/13/2004	7	0.0005224	\$54.84
Nov-04	11/12/04	BellSouth	\$0.00	\$0.04	\$0.00	\$0.04	12/20/2004	12/13/2004	7	0.0005	\$0.00
Nov-04	11/12/04	BellSouth	(\$2,000.51)	\$0.88	\$10,041.30	\$10,041.30	12/20/2004	12/13/2004	7	0.0004536	\$31.88
Nov-04	11/13/04	BellSouth	\$0.00	\$0.00	\$0.57	\$0.57	12/20/2004	12/13/2004	7	0.0004536	\$0.00
Nov-04 Total			(\$5,594.43)	\$103.18	\$299,348.40	\$299,313.67					\$2,320.84
Dec-04	12/01/04	BellSouth	\$0.00	\$1.80	\$2,913.39	\$2,913.39	1/20/2005	12/31/2004	20	0.00059	\$34.40
Dec-04	12/01/04	BellSouth	\$0.00	\$18.29	\$83,253.73	\$83,253.73	1/20/2005	12/31/2004	20	0.0005	\$832.54
Dec-04	12/01/04	BellSouth	(\$42.48)	\$0.30	\$1,222.86	\$1,180.68	1/20/2005	12/31/2004	20	0.0003333	\$7.87
Dec-04	12/01/04	BellSouth	(\$3,349.21)	\$19.19	\$29,153.02	\$25,823.00	1/20/2005	12/31/2004	20	0.0004536	\$234.27
Dec-04	12/01/04	BellSouth	(\$20.43)	\$20.43	\$86,638.23	\$86,638.23	1/20/2005	12/31/2004	20	0.0004536	\$785.98
Dec-04	12/01/04	BellSouth	\$0.00	\$0.54	\$2,418.70	\$2,418.70	1/20/2005	12/31/2004	20	0.0004536	\$21.95
Dec-04	12/01/04	BellSouth	(\$7.10)	\$7.10	\$4,876.77	\$4,876.77	1/20/2005	12/31/2004	20	0.0005224	\$50.95
Dec-04	12/01/04	BellSouth	(\$9.66)	\$9.66	\$37,831.64	\$37,831.64	1/20/2005	12/31/2004	20	0.0004536	\$343.21
Dec-04	12/12/04	BellSouth	(\$108.48)	\$6.91	\$19,851.37	\$19,749.80	1/20/2005	1/12/2005	8	0.00059	\$93.22
Dec-04	12/12/04	BellSouth	\$0.00	\$0.00	\$4.91	\$4.91	1/20/2005	1/12/2005	8	0.0005	\$0.02
Dec-04	12/12/04	BellSouth	\$0.00	\$0.01	\$3,862.46	\$3,862.46	1/20/2005	1/12/2005	8	0.0003333	\$9.77
Dec-04	12/12/04	BellSouth	\$0.00	\$4.57	\$15,738.12	\$13,946.34	1/20/2005	1/12/2005	8	0.0004536	\$50.61
Dec-04	12/12/04	BellSouth	\$0.00	\$0.92	\$2,118.95	\$2,118.95	1/20/2005	1/12/2005	8	0.0004536	\$7.69
Dec-04	12/12/04	BellSouth	\$0.00	\$0.81	\$0.00	\$0.81	1/20/2005	1/12/2005	8	0.0005224	\$0.00
Dec-04	12/12/04	BellSouth	\$0.00	\$1.84	\$12,520.06	\$12,521.90	1/20/2005	1/12/2005	8	0.0005224	\$52.33
Dec-04	12/12/04	BellSouth	\$0.00	\$0.68	\$9,896.80	\$9,897.48	1/20/2005	1/12/2005	8	0.0004536	\$35.92
Dec-04	12/13/04	BellSouth	\$0.00	\$0.00	\$0.59	\$0.59	1/20/2005	1/13/2005	7	0.0004536	\$0.00
Dec-04 Total			(\$3,537.36)	\$93.05	\$312,101.60	\$306,842.65					\$2,560.72
Jan-05	01/01/05	BellSouth	\$0.00	\$2.06	\$2,602.65	\$2,602.65	2/16/2005	1/31/2005	16	0.00059	\$24.57
Jan-05	01/01/05	BellSouth	\$0.00	\$24.29	\$76,712.12	\$76,712.12	2/16/2005	1/31/2005	16	0.0005	\$613.70
Jan-05	01/01/05	BellSouth	(\$36.20)	\$0.39	\$1,220.56	\$1,184.75	2/16/2005	1/31/2005	16	0.0003333	\$6.32
Jan-05	01/01/05	BellSouth	\$0.00	\$22.25	\$16,093.58	\$16,093.58	2/16/2005	1/31/2005	16	0.0004536	\$116.80

Bill Month	Bill Date	Title	Adjustments	LPCs Billed	Usage	Payment	Payment Date	Bill Due Date	Days Late	Daily Interest Rate	LPC Due
Jan-05	01/01/05	BellSouth	(\$26.61)	\$26.61	\$84,901.41	\$84,901.41	2/16/2005	1/31/2005	16	0.0004536	\$ 616.18
Jan-05	01/01/05	BellSouth	\$2,738.80	\$0.68	\$2,179.46	\$2,179.46	2/16/2005	1/31/2005	16	0.0004536	\$ 15.82
Jan-05	01/01/05	BellSouth	\$0.00	\$6.74	\$4,851.54	\$4,851.54	2/16/2005	1/31/2005	16	0.0005224	\$ 40.55
Jan-05	01/01/05	BellSouth	(\$12.30)	\$12.30	\$33,855.67	\$33,855.67	2/16/2005	1/31/2005	16	0.0004536	\$ 245.71
Jan-05	01/12/05	BellSouth	(\$10.00)	\$10.00	\$8,092.27	\$8,092.27	2/16/2005	2/11/2005	5	0.00059	\$ 23.87
Jan-05	01/12/05	BellSouth	\$0.00	\$0.28	\$3,298.74	\$3,298.74	2/16/2005	2/11/2005	5	0.0003333	\$ 5.50
Jan-05	01/12/05	BellSouth	\$0.00	\$6.33	\$15,762.90	\$15,762.90	2/16/2005	2/11/2005	5	0.0004536	\$ 35.75
Jan-05	01/12/05	BellSouth	\$0.00	\$1.13	\$1,981.31	\$1,982.44	2/16/2005	2/11/2005	5	0.0004536	\$ 4.50
Jan-05	01/12/05	BellSouth	\$0.00	\$0.83	\$0.00	\$0.83	2/16/2005	2/11/2005	5	0.0004536	\$ 0.00
Jan-05	01/12/05	BellSouth	\$0.00	\$3.71	\$10,971.91	\$10,975.62	2/16/2005	2/11/2005	5	0.0005224	\$ 28.67
Jan-05	01/12/05	BellSouth	\$0.00	\$1.76	\$7,166.25	\$7,168.01	2/16/2005	2/11/2005	5	0.0004536	\$ 16.26
Jan-05	01/13/05	BellSouth	\$0.00	\$0.00	\$0.63	\$0.63	2/16/2005	2/14/2005	2	0.0004536	\$ 0.00
Jan-05 Total			\$2,653.69	\$119.36	\$269,676.19	\$269,662.90					1,794.19
Feb-05	02/01/05	BellSouth	\$0.00	\$0.00	\$2,740.40	\$2,740.40	03/09/05	03/01/05	8	0.00059	\$ 12.93
Feb-05	02/01/05	BellSouth	(\$74.04)	\$24.58	\$73,216.83	\$73,216.83	03/09/05	03/01/05	8	0.0005	\$ 292.87
Feb-05	02/01/05	BellSouth	(\$272.84)	\$0.32	\$1,158.32	\$1,158.64	03/09/05	03/01/05	8	0.0003333	\$ 3.09
Feb-05	02/01/05	BellSouth	(\$9,789.10)	\$21.31	\$10,061.26	\$9,064.45	03/09/05	03/01/05	8	0.0004536	\$ 32.89
Feb-05	02/01/05	BellSouth	\$0.00	\$27.96	\$89,446.98	\$89,446.98	03/09/05	03/01/05	8	0.0004536	\$ 324.59
Feb-05	02/01/05	BellSouth	\$0.00	\$0.66	\$1,614.86	\$1,615.52	03/09/05	03/01/05	8	0.0004536	\$ 5.86
Feb-05	02/01/05	BellSouth	(\$6,455.75)	\$4.22	\$5,001.89	\$5,001.89	03/09/05	03/01/05	8	0.0005224	\$ 20.90
Feb-05	02/01/05	BellSouth	\$0.00	\$11.79	\$29,309.85	\$29,309.85	03/09/05	03/01/05	8	0.0004536	\$ 106.36
Feb-05	02/09/05	BellSouth	(\$4.55)	\$0.00	\$0.00	\$0.00				0.0003333	
Feb-05	02/12/05	BellSouth	\$0.00	\$9.90	\$7,042.87	\$7,042.87	03/09/05	03/11/05		0.00059	
Feb-05	02/12/05	BellSouth	(\$42.19)	\$0.28	\$3,729.60	\$3,729.60	03/09/05	03/11/05		0.0003333	
Feb-05	02/12/05	BellSouth	(\$5,699.27)	\$5.74	\$14,503.49	\$12,744.20	03/09/05	03/11/05		0.0004536	
Feb-05	02/12/05	BellSouth	\$0.00	\$1.17	\$1,535.07	\$1,535.07	03/09/05	03/11/05		0.0004536	
Feb-05	02/12/05	BellSouth	\$0.00	\$0.83	\$0.00	\$0.83	03/09/05	03/11/05		0.0004536	
Feb-05	02/12/05	BellSouth	(\$5,227.33)	\$1.53	\$3,140.14	\$3,140.14	03/09/05	03/11/05		0.0005224	
Feb-05	02/12/05	BellSouth	(\$1.27)	\$0.00	\$21.78	\$21.78	03/09/05	03/11/05		0.0005	
Feb-05	02/12/05	BellSouth	\$0.00	\$1.74	\$5,824.78	\$5,824.78	03/09/05	03/11/05		0.0004536	
Feb-05	02/13/05	BellSouth	\$0.00	\$0.00	\$0.59	\$0.59	03/09/05	03/14/05		0.0004536	
Feb-05 Total			(\$27,566.34)	\$114.05	\$246,348.43	\$245,594.42					799.50
Mar-05	03/01/05	BellSouth	(\$1,658.93)	\$0.71	\$2,679.77	\$2,880.48	04/19/05	04/01/05	18	0.00059	\$ 30.59
Mar-05	03/01/05	BellSouth	\$0.00	\$17.64	\$68,138.93	\$42,883.53	04/19/05	04/01/05	18	0.0005	\$ 385.95
Mar-05	03/01/05	BellSouth	\$0.00	\$0.26	\$1,279.55	\$1,279.81	04/19/05	04/01/05	18	0.0003333	\$ 7.68
Mar-05	03/01/05	BellSouth	(\$39,931.91)	\$3.36	\$5,269.02	\$5,269.02	04/19/05	04/01/05	18	0.0004536	\$ 43.02
Mar-05	03/01/05	BellSouth	(\$20,391.85)	\$17.71	\$93,055.02	\$84,317.96	04/19/05	04/01/05	18	0.0004536	\$ 688.44
Mar-05	03/01/05	BellSouth	\$0.00	\$0.46	\$40,705.13	\$36,188.92	04/19/05	04/01/05	18	0.0004536	\$ 295.48
Mar-05	03/01/05	BellSouth	(\$17.41)	\$3.61	\$5,062.44	\$5,062.44	04/19/05	04/01/05	18	0.0005224	\$ 47.60
Mar-05	03/01/05	BellSouth	(\$3,574.26)	\$7.06	\$11,742.10	\$11,742.10	04/19/05	04/01/05	18	0.0004536	\$ 95.87
Mar-05	03/12/05	BellSouth	(\$11,996.75)	\$0.47	\$0.00	\$0.47	04/19/05	04/12/05	7	0.00059	\$ 0.00
Mar-05	03/12/05	BellSouth	\$0.00	\$0.00	\$3,400.77	\$3,400.77	04/19/05	04/12/05	7	0.0003333	\$ 7.93
Mar-05	03/12/05	BellSouth	(\$11,571.64)	\$1.45	\$10,578.40	\$10,579.85	04/19/05	04/12/05	7	0.0004536	\$ 33.59
Mar-05	03/12/05	BellSouth	(\$4,161.10)	\$0.09	\$0.00	\$0.09	04/19/05	04/12/05	7	0.0004536	\$ 0.00
Mar-05	03/12/05	BellSouth	(\$43.23)	\$0.57	\$257.84	\$258.41	04/19/05	04/12/05	7	0.0005224	\$ 0.94
Mar-05	03/12/05	BellSouth	\$0.00	\$0.00	\$22.99	\$22.99	04/19/05	04/12/05	7	0.0005	\$ 0.08
Mar-05	03/12/05	BellSouth	(\$1,543.92)	\$0.32	\$1,329.36	\$1,829.68	04/19/05	04/12/05	7	0.0004536	\$ 5.81
Mar-05	03/13/05	BellSouth	\$0.00	\$0.00	\$0.67	\$0.67	04/19/05	04/13/05	6	0.0004536	\$ 0.00
Mar-05 Total			(\$94,891.00)	\$53.71	\$244,222.59	\$205,717.19					1,643.00
Grand Total			(\$9,565,294.34)		\$5,767,172.81	\$5,468,278.49					50,242.49

History of BellSouth's Payments to KMC under Current ICA Terms (30 days from Bill Date)

Number of Invoices Paid 253
Number of Invoices Paid Late 231
Percentage of Invoices Paid Late 91.30%